

SUPREME COURT OF INDIA  
LIST OF REPORTABLE MATTERS  
LIST NO. 1 OF 2003

<u>S. NO.</u>	<u>CAUSE TITLE</u>	<u>SUBJ.</u>	<u>DATE</u>
1.	Crl. A.No. 15 of 2002 Lallu Manjhi and Anr. v. State of Jharkhand	Criminal	7.1.2003
2.	Crl. A. Nos.651-652 of Rajendra Shantaram Todankar v. State of Maharashtra and Ors.	Criminal	7.1.2003
3.	Crl. Appeal Nos. 1530-31 of 1995 State of Karnataka v. M.V. Manjunathgowda and Anr.	Criminal	-do-
4.	Crl. Appeal Nos. 671-78 1997 State of Rajasthan v. Hori Singh and Ors.	-do-	8.1.2003
5.	Crl. Appeal Nos. 1150-1151 of 2001 Chittarmal v. State of Rajasthan	-do-	-do-
6.	Crl. A. No. 1988 of 1988/1996 Gurucharan Kumar & Anr.v. State of Rajasthan	-do-	-do-
7.	Civil Appeal No. 1119s of 1996 Sharda Devi v. State of Bihar & Anr.	Civil	-do-
8.	Reference No. 1 of 2002 (Under Article 317(1) of the Constitution of India)	-do-	13.1.2003
9.	Civil Appeal No. 2693 of 2000 M/s. Easland Combindes, Coimbatore v. The Collector of Central Excise, Coimbatore	-do-	13.1.2003
10.	Crl. Appeal No. 1097 of 1999 Ram Narain Poply v. Central Bureau of Investigation	Criminal	14.1.2003

11.	Civil Appeal Nos. 11651-1165 M/s. Alpine Industries v. Collector of Central Excise, New Delhi.	Tax	14.1.2003
12.	C.A.No. 6302 95 Kedia Agglomerated Materials Ltd. v. Collector of Central Excise	Tax	14.1.2003
13.	C.A.No.321 99 Badrinarayana Chunilal Bhutada v. Govindram Ramgopal Mundada	Civil	15.1.2003
14.	C.A.No.288 2003 Achaldas Durgaji Oswal (Dead) through Lrs. v. Ramvilas Gngabisan Heda (Dead) through Lrs. & Ors.	Civil	15.1.2003
15.	Crl.A.No. 498/2000 Zafar v. State of U.P.	Criminal	15.1.2003
16.	C.A.No.9927 96 State of Karnataka v. Vishwabarathi House Building Coop. Society & Ors.	Civil	17.1.2003
17.	Crl. Misc.P.No.9478/2002 Maliyakkal Abdul Azeez v. Assistant Collector, Kerala & Anr.	Criminal	17.1.2003
18.	C.A.No.16338 96 Union of India & Ors. v. A.P.Bajpai & Ors.	Service	29.1.2003
19.	C.A.No.2421 2001 Sri Justice S.K.Ray v. State of Orissa & Ors.	Civil	20.1.2003
20.	W.P.(Crl.)No.87 2002 Darpan Kumar sharma & Dharban Kumar Sharma v. State of Tamil Nadu & Ors.	Criminal	20.1.2003

CORRIGENDUM:

		REPORTABLE NO.	DATE
1.	C.A.No.2227/2000 M/s. Precision Steel & Eng. Works & Anr. v. Prem Deva Niranjana Degva Tayal	521/2002	9.12.2002
2.	S.L.P.(C) No.11890/2002 Beg Raj Singh v. State of U.P. & Ors.	556/2002	18.12.2002
3.	C.A.No.2898 2000 Atma S.Berar v. Mukhtiar Singh	529/2002	12.12.2002

4.	C.A.No.8322/2001 Elitech Electrothermics & Hydropower Ltd. State of Kerala & Ors.	539/2002	17.12.2002
5.	C.A.No.2474/99 R.Kapil Nath (Dead) v. Krishna	532/2002	13.12.2002
6.	Crl.A.No.620/95 Joseph v. State of Kerala	501/2002	3.12.2002
7.	C.A.No.8131/2002 N.C.Daga v. Inder Mohan Singh Rana	516/2002	5.12.2002
8.	Crl.A.No.824/2002 Om Prakesh @ Raja v. State of Uttaranchal	517/2002	5.12.2002
9.	C.A.No.5385/2001 New India Assurance Co. Ltd. etc. v. Asha Rani & Ors.	508/2002	3.12.2002
10.	Crl.A.No.15/2002 Lalu Manjhi & Anr. v. State of Jharkhand	1/2003	7.1.2003
11.	C.A.No.5124/03 Sushila v. Ind. Adm. District Judge, Banda & Ors.	547/2002	17.12.2002
12.	Crl.A.No.824/2002 Om Prakash @ Raja v. State of Uttaranchal	517/2002	5.12.2002
13.	Crl.A.No.538/94 State of Haryana v. Mange Ram	528/2002	11.12.2002

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<u>SL.NO.</u>	<u>CAUSE TITLE</u>	<u>SUBJECT</u>	<u>DATE</u>
21.	C.A.Nos. 4598-4612/94 G.S.Auto International Ltd. ve. Collector of Central Excises, Chandigarh	Tax	15.1.2003
22.	C.A.No. 6362/2000 A.P.S.R.T.C. & Anr. v. S.Narsagoud	Service	15.1.2003
23.	Crl.A.No.70/2003 U.Dhar & Anr. v. State of Jharkhand & Anr.	Criminal	20.1.2003
24.	C.A.No.177 2000 The Commissioner of Police, Hubli & Anr. v. R.S.More	Service	21.1.2003
25.	Crl.A.No.82/2003 Rizan & Anr. v. State of Chhatisgarh through the Chief Secretary, Govt. of Chhatisgarh, Raipur, Chhatisgarh	Criminal	21.1.2003
26.	C.A.No. 11458/95 Comptroller & Auditor General v. Kamlesh Vadilal Mehta	Service	21.1.2003
27.	C.A.No.3781/99 State Bank of India & Ors. v. K.P.Narayanan Kutty	Service	16.1.2003
28.	C.A.No.442/2003 Modi Entertainment Network & Anr. v. W.S.G.Cricket PTE. Ltd.	Civil	21.1.2003
29.	Crl.A.No. 789/2002 Bhagwan Singh & Ors. v. State of M.P.	Criminal	23.1.2003



30.	C.A.No.5101/96		
	Ghaziabad Development Authority v. Anoop Singh & Anr.	Civil	23.1.2003
31.	C.A.Nos.981-990/2002		
	Oriental Insurance Co. Ltd. v. Devireddy Konda Reddy & Ors.	Civil	24.1.2003
32.	C.A.Nos. 2185-88/94		
	Union of India & Ors. v. M's. Chowgule & Co. Ltd. & Ors.	Civil	24.1.2003
33.	C.P.Nos.280-281/2000 IN		
	S.L.P.(C) No. 5393-94/99	Civil	24.1.2003
	K.C.G.Vergheese v. K.T.Rajendran & Anr.		
34.	Crl.A.No.905/95	Criminal	24.1.2003
	State of Karnataka v. Mohamed Nazeer @ Babu		
✓35.	W.P.(C) No. 407/2001		
	Ms.Neelu Arora & Anr. v. U.O.I. & Ors	Education	24.1.2003
36.	Crl.A.No.662/95		
	State of Karnataka v. Shariff	Criminal	27.1.2003
✓37.	W.P.(C) No. 393/2002		
	Supreet Batra & Ors. v. U.O.I. & Ors	Education	27.1.2003
38.	C.A.No.59/2001		
	High Court of Judicature for Rajasthan v. P.P.Singh & Anr.	Civil	27.1.2003
39.	C.A.No.2606-07/2001	Tax	27.1.2003
	N.Bagavathy Ammal v. C.I.T., Madurai & Anr.		
40.	Crl.A.No.129/2003		
	Ajay Mitra v. State of M.P. & Ors.	Criminal	28.1.2003

## CORRIGENDUM

REPORTABLE NO. DATE

15.	S.R.C.No.1/2002		
	Under Article 143(1) of the Constitution of India	442/2002	28.10.2002

16.	S.R.C.No.1/2002 Under Article 143(1) of the Constitution of India	442/2002	28.10.2002
17.	S.R.C.No.1/2002 Under Article 143(1) of the Constitution of India	442/2002	28.10.2002
18.	C.A.No.5385/2001 New India Assurance Co. Ltd. v. Asha Rani & Ors.	508/2002	3.12.2002
19.	C.A.No.3665-3758/95 State of Gujarat v. M's. Arvind Mills & Ors.	509/2002	4.12.2002
20.	C.A.No.8003/2002 Bhavnagar University v. Palitana Sugar Mill Pvt. Ltd.	507/2002	3.12.2002
21.	W.P.No.132/38 Ex.Capt. Harish Uppal v. Union of India & Anr.	544/2002	17.12.2002
22.	C.A.Nos.3350-54/93 Shrimoni Gurdwara Parbandhak Committee. Amritsar v. Bagga Singh & Ors.	505/2002	3.12.2002
23.	T.C.(C) No.80/2002 Onkar Lal Bajaj etc. v. U.O.I. & Anr.	564/2002	20.12.2002
24.	C.A.No.854/2002 Bank of India & Ors. v. O.P. Swaranakar etc.	552/2002	17.12.2002
25.	C.A.No.4023/2002 Shaligram Shrivastava v. Naresh Singh Patil	563/2002	19.12.2002
26.	C.A.No.8211/2001 Director of Income Tax v. M's. Bharat Diamond Bourse	537/2002	16.12.2002



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<u>SL. NO.</u>	<u>CASE TITLE</u>	<u>SUBJECT</u>	<u>DATE</u>
41.	C.A.Nos.630-32 2003 Bharat Lal Baranwal v. Harendra Kumar Agarwal	Civil	29.1.2003
42.	C.A.No.3946 2001 Public Services Tribunal Bar Association v. State of U.P. & Anr.	Service	29.1.2003
43.	C.A.No.3658 94 State of Gujarat & Ors. v. Saurashtra Cement & Chemical Ind. Ltd.	Civil	29.1.2003
44.	C.A.No.639 2003 Rourkela Shramik Singh v. Steel Authority of India Ltd & Anr.	Labour	29.1.2003
45.	C.A.No.635 2003 Dayal Singh & Ors. v Union of India & Ors.	Civil	29.1.2003
46.	Crl.A.No.389 2001 Central Bureau of Investigation v. Ashiq Hussain Faktoo & Ors.	Criminal	30.1.2003
47.	Crl.A.No.1671 95 Amar Singh v. Balwinder Singh & Ors.	Criminal	31.1.2003
48.	C.A.No.4958 94 Collector of Customs. Bombay v. M.s. Elephanta Oil & Industries Ltd. Bombay	Tax	31.1.2003
49.	C.A.No. 4622 2000 Director General R.P.F. & Ors. v. Ch.Sai Babu	Service	29.1.2003
50.	C.A.No.726 2001 Dhananjay v. Chief Executive Officer, Zila Panshad, Jalna	Service	30.1.2003

51.	C.A.No.137 99 High Court of Judicature at Bomay through Registrar & Anr. v. Brij Mohan Gupta (Dead) through Lrs. & Anr.	Service	23.1.2003
52.	C.A.No.6407 2002 U.O.I. & Ors. v. Dhir Singh Chana. Colonel (Retd.)	Service	4.2.2003
53.	C.A.No.5781 99 State of U.P. & Anr. etc. v. U.O.I & Anr.	Tax	4.2.2003
54.	C.A.No.488 96 Ehurat v. State of M.P.	Criminal	30.1.2003
55.	C.A.No.5077 98 Nasiruddin & Ors. v. Sita Ram Agarwal	Civil	28.1.2003
56.	C.A.No.1024 2003 H.Gangahanume Gowda v. Karnataka Agro Industries Corpn. Ltd.	Service	5.2.2003
57.	C.A.No.1577 94 Food Corporation of India v. Surendra, Devendra & Mahendra Transport Co.	Arbitration	5.2.2003
58.	C.A.Nos. 1050-51 2003 P.Lal v U.O.I. & Ors.	Service	5.2.2003
59.	C.A.Nos. 5680-81 94 N.Khadervali Saheb (Dead) by Lrs. & Anr. v. N.Gudu Sahib (Dead) & Ors.	Civil	5.2.2003
60.	Cd.A.No.92 2002 State of M.P. & Anr. v. Bhola @ Bhairon Prasad Raghuvanshi	Criminal	6.2.2003

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<u>SL.</u>	<u>CASE TITLE</u>	<u>SUBJECT</u>	<u>DATE</u>
61.	C.A.No.1058/2003 Sarwan Kumar & Anr. v. Madan Lal Aggarwal	Civil	6.2.2003
62.	C.A.Nos. 1008-1009/2003 Prema (Dead) through Lrs. v. Surat Singh & Ors. etc.	Civil	4.2.2003
63.	C.A.No.1578/94 Rikhi Ram & Anr. v. Smt.Sukhrania & Ors.	Civil	5.2.2003
64.	C.A.No. 9265/95 M.T.W.Tenzing Namgyal & Ors. v. Motilal Lakhotia & Ors.	Civil	5.2.2003
65.	C.A.No.818/2001 Kasturi Bai & Ors. v. Anguri Chaudhary	Civil	5.2.2003
66.	C.A.No.557/2003 Sadhana Lodh v. National Insurance Co. Ltd. & Anr.	Civil	24.1.2003
67.	C.A.Nos. 12043-12054/95 Collector, Central Excise, Madras etc. v. M/s. I.T.C.Ltd., Bihar etc.	Tax	6.2.2003
68.	C.A.No.1062/2003 Municipal Corporation of Delhi & Ors. v. Intl. Security & Intelligence Agency Ltd.	Civil	6.2.2003
69.	C.A.No.1068/2003 St.Johns Teachers Training Institute v. Regional Director, National Council for Teacher Education & Anr.	Education	7.2.2003
70.	C.A.No.5351/95 Kunjuanam Antony (Dead) by Lrs. v. State of Kerala & Anr.	Civil	6.2.2003
71.	C.A.Nos.2123-2124/94 T.N.Dadha Pharmaceduticals v. Collector of Central Excise, Madras	Tax	5.2.2003

72.	C.A.No.4231/99 Renu Devi v. Mahendra Singh & Ors.	Civil	4.2.2003
73.	Crl.A.No.1139/2000 State through Narcotics Control Bureau Kulwant Singh	Criminal	11.2.2003
74.	Crl.A.No.445/93 Radha Mohan Lal v. Rajasthan High Court (Jaipur Bench)	Criminal	11.2.2003
75.	C.A.No.5984/2000 Regional Manager, U.P.S.R.T.C., Etawah & Ors. v. Hoti Lal & Anr.	Service	11.2.2003
76.	C.A.No.5688/2003 Ram Ahsrey Singh & Anr. v. Ram Bux Singh & Ors.	Service	11.2.2003
77.	C.A.No.3433/2000 Chairman & Managing Director, United Commercial Bank & Ors. v. P.C Kakkar	Service	11.2.2003
78.	C.A.Nos. 14562-14563/96 Archana M.Kamath v. Canara Bank & Anr.	Civil	6.2.2003
79.	C.A.No.6745/99 M.s. Cadila Laboratories Pvt. Ltd. v. C.C.E. Vadodra	Tax	13.2.2003
80.	C.A.No.919/2001 Balwant Singh & Ors. v. Anand Kumar Sharma & Ors.	Civil	28.1.2003

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<u>SL. NO.</u>	<u>CAUSE TITLE</u>	<u>SUBJECT</u>	<u>DATE</u>
81.	C.A.No. 1789-2000 Kunal Singh v. U.O.I. & Anr.	Service	13.2.2003
82.	Crl.A.No.139-96 Anil Kumar v. State of U.P.	Criminal	13.2.2003
83.	C.A.Nos. 1296-97 2003 State of Maharashtra v. Jalgaon Municipal Council & Ors.	Civil	14.2.2003
84.	C.A.No. 152-94 Subhasis Bakshi & Ors. v. W.B.Medical Council & Ors.	Education	14.2.2003
85.	C.A.No.1317/2003 Kalish Nath Agrawal & Ors. v. Pradeshya Indst of Inv. Corpn. of U.P. & Anr.	Labour	14.2.2003
86.	C.A.No.2399-96 G.Bassi Reddy v. International Corpn. Research Instl. & Anr.	Civil	14.2.2003
87.	C.A.No.2283-98 Shonkar Popat Gaidhani v Hiraman Umaji More (dead) by Lrs. & Ors.	Civil	14.2.2003
88.	C.A.No.5178-97 Kuldip Chand & Anr. v. Advocate Genl.to Govt. of H.P. & Ors.	Civil	14.2.2003
89.	C.A.No. 2148-98 M V Shankar Bhat & Anr. v. Claude Pinto Since (Deceased) by Lrs. & Ors	Civil	14.2.2003
90.	C.A.No.5193-97 Abati Bezbaruah v. Dy. Director Gen. Geo Survey of India & Anr.	Civil	14.2.2003
91.	C.A.Nos.4908-4911-2002 M s. D.L.F.Qutab Enclave Complex Educational Charitable Trust v State of Haryana & Ors.	Civil	17.2.2003



92.	C.A.No.2065 2000 State of U.P. & Ors. v. Smt.Janki Devi Pal	Civil	13.2.2003
93.	C.A.Nos. 1376-1377-2003 Banarsi & Ors. v. Ram Phal	Civil	17.2.2003
94.	C.A.No. 1374 2003 Commissioner of Sales Tax & Ors. v. M s. Subhash & Co.	Civil	17.2.2003
95.	C.A.No.6519-94 Pamuru Vishnu Vinodh Reddy v. Chillakuru Chandrasekhara Reddy & Ors.	Civil	17.2.2003
96.	Crl.A.No.229 2003 Ghapoo Yadav & Ors. v. State of M.P.	Criminal	17.2.2003
97.	W.P.(C) No. 12598 85 Sh. Kirshna Gyanoday Sugar Ltd. & Anr. v. State of Bihar	Civil	18.2.2003
98.	C.A.No. 3961-2001 Lalit Popli v. Canara Bank & Ors.	Service	18.2.2003
99.	C.A.No.7744-97 Dr.(Mrs.) Chanchal Goyal v. State of Rajasthan	Service	18.2.2003
100.	C.A.No.2531-2001 etc. Maan Singh v. U.O.I. & Ors.	Service	18.2.2003

### CORRIGENDUM

### REPORTABLE NO.

28.	C.A.Nos.1296-97 2003 The State of Maharashtra & Anr. v. The Lalgaoon Municipal Council & Ors	83 2003	14.2.2003
29.	E.P.No.1-2002 Charan Lal Sahu v. Dr.A.P.J.Abdul Kalam & Ors	526 2002	11.12.2002
31.	C.A.No.4594-95 Mahila Bajrangi (Dead) through Lrs. & Ors. v. Badriba: Wo Jagannath & Anr.	560 2002	19.12.2002

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S.NO.	CAUSE TITLE	SUBJECT	<u>DATE</u>
101.	C.A.No. 5168/98 Welfare Assocn. A.R.P. Maharashtra & Anr. v. Ranjit P. Gohil & Ors.	Civil	18.2.2003
102.	C.A.No. 9393/95 Chandramohan Ramchandra Patil & Ors. v. Bapu Koyappa Patil (D) through Lrs. & Ors.	Civil	19.2.2003
103.	C.A.Nos.4728-4732/89 K.T Venkatagiri & Ors. v. State of Karnataka & Ors.	Tax	13.2.2003
104.	C.A.No.1417/2003 Ramgopal & Anr. v. Balaji Mondir Trust & Ors.	Civil	19.2.2003
105.	C.A.No. 672/2001 Mathew P.Thomas v. Kerala State Civil Supply Corpn. Ltd. & Ors.	Service	19.2.2003
106.	Crl.A.No. 336/96 Uday v. State Karnataka	Criminal	19.2.2003
107.	C.A.No.3292/93 G.Chrishudas & Anr. v. Anbiah (D) & Ors.	Civil	19.2.2003
108.	Crl.A.No.486/96 State of U.P. v. Premi & Ors.	Criminal	20.2.2003

109.	C.A.No.7805-2001 Subal Paul v. Malina Paul & Anr.	Civil	13.2.2003
110.	C.A.No.42-93 Siddagowda v Assistant Commissioner & Ors.	Civil	13.2.2003
111.	C.A.No.3969-95 M.s. P.& B Pharmaceuticals (P) Ltd. Collector of Central Excise	Tax	19.2.2003
112.	C.A.No. 1502-1503-2003 Daewoo Motors India Ltd. v. Union of India & Ors.	Civil	20.2.2003
113.	C.A.No. 13275-96 Imdad Ali v. Keshav Chand & Ors	Civil	19.2.2003
114.	C.A.No. 7122-97 Rashbir Singh & Ors. v Kartar Singh & Ors.	Civil	25.2.2003
115.	C.A.No.11632-95 Namdev Vyankat Ghadge & Anr. v. Chandrakant Ganpat Ghadge & Ors.	Civil	25.2.2003
116.	C.A.No.6634-95 Sahyadri Sahakari Sakhar Karkhana Ltd. v. Collector of Central Excise. Pune	Tax	25.2.2003
117.	C.A.No.8580-94 Chief Conservator of Forests, Govt. of A.P. v. The Collector & Ors.	Civil	18.2.2003
118.	C.A.No. 1495-93 Agriculture Market Committee. Rayam & Anr. v. Rajam Jute & Oil Millers Association. Rajam	Civil	25.2.2003

119.	C.A.Nos. 5941-5942 '99 M/s. Amco Batteries Ltd., Bangalore v. Collector of Central Excise, Bangalore	Tax	26.2.2003
120.	C.A.No. 1411 '95 Forbes Gokak Ltd. v. Collector of Central Excise, Aurangabad	Tax	26.2.2003

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32. C.A.No.5168-98 Welfare Association A.R.P., Maharashtra & Anr. v. Ranjit Gohil & Ors.	101-2003	18.2.2003
33. C.A.Nos. 3978-79 98 Ajay Kumar Bhuyan & Ors. v. State of Orissa	504 2002	3.12.2002
34. C.A.Nos.1027-28 92 S.Amarjit Singh Kalra (D) by Lrs. & Ors. v. Smt. Pramod Gupta (Dead) by Lrs. & Ors.	550 2002	17.12.2002
35. C.A.No. 8599-2002 Sunil Kumar Rana v. State of Haryana & Ors.	561 2002	19.12.2002
36. C.A.No.7247 95 Jinia Keotion & Ors. v. Kumar Sitaram Manjhi & Ors.	572 2002	20.12.2002
37. C.A.No.321 99 Badrinarayan Chunilal Bhutada v. Govindram Ram Gopal Mundada	13 2003	15.1.2003
38. C.A.No.2399 86 G.Bassi Reddy v. International Corpe Research Instt. & Anr.	86.2003	14.2.2003

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|-----|---|----------|------------|
| 39. | C.A.Nos.4679-80'96  | 562-2002 | 19.12.2002 |
|     | P.U.Jeshi & Ors. v. The Accountant<br>General. Ahmedabad & Ors.   |          |            |
| 40. | C.A.No. 14198'96  | 7 2003   | 8.1.2003   |
|     | Sharada Devi v. State of Bihar & Anr.                             |          |            |
| 41. | C.A.Nos. 854 2002 etc. etc.                                       |          |            |
|     | Bank of India & Ors. v.   | 552 2002 | 17.12.2002 |
|     | O.P. Swarnakar etc.   |          |            |
| 42. | C.A.Nos. 4728-32'89   |          |            |
|     | K.T.Venkatagiri & Ors. v.   | 103 2003 | 13.2.2003  |
|     | State of Karnataka & Ors.   |          |            |
| 44. | C.A.No.59 2001  |          |            |
|     | High Court of Judicature for                                      | 38 2003  | 27.1.2003  |
|     | Rajasthan v. P.P.Singh & Anr.                                     |          |            |
| 45. | Cr.A.No.889 2001  | 46-2003  | 30.1.2003  |
|     | Central Bureau of Investigation v.<br>Ashiq Hussain Faktoo & Ors. |          |            |

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S.NO.	CAUSE TITLE	SUBJECT	DATE
121.	C.A.No.5519/94 Chief Forest Conservator (Wild Life) & Ors. v. Nisar Khan	Civil	18.2.2003
122.	C.A.No.3266/2001 Kendriya Vidyalaya Sangathan & Ors. v. Ram Ratan Yadav	Service	26.2.2003
123.	C.A.No.6087/2001 Mithilesh Singh v. U.O.I. & Ors.	Service	27.2.2003
124.	C.A.No.3299/2000 Indian Railway Construction Co. Ltd. v. Ajay Kumar	Service	27.2.2003
125.	C.A.No.2050/2000 M.s. Hindustan Metal Pressing Works v. Commissioner of Central Excise, Pune	Tax	27.2.2003
126.	C.A.Nos. 12578-82/96 A.G.Sainath Reddy v. The Govt. of A.P. & Ors.	Service	28.2.2003
127.	C.A.Nos.11733-34/95 Ravinder Narain & Anr. v. U.O.I.	Civil	28.2.2003

128.	C.A.Nos.13010-13019/96	Collector & Ors. v. P.Mangamma & Ors.	Civil	28.2.2003
129.	Ch.A.No.372/2001	R.Balakrishna Pillai v. State of Kerala	Criminal	28.2.2003
130.	C.A.No.1860/2003	Jamal Uddin Ahmad v. Abu Saleh Najmuddin & Anr.	Election	28.2.2003
131.	C.A.No.947/95	U.O.I. v. Shiv Dayal Soin & Sons Pvt. Ltd. & Ors	Civil	26.2.2003
132.	C.A.No.4157/2000	Pranod Jha & Ors. v. State of Bihar & Ors.	Service	3.3.2003
133.	Ch.A.No.1534/95	K.Shamrao & Ors. v. Assistant Charity Commissioner	Criminal	4.3.2003
134.	C.A.No.4394/97	Maharashtra State Road Transport Corporation v. State of Maharashtra	Civil	4.3.2003
135.	C.A.No.5050/2002	Department of Telecommunication & Anr. v. Cellular Operators Association of India & Ors.	Civil	4.3.2003
136.	Ch.A.No.1678/95	State of Karnataka v. M.V.Mahesh	Criminal	4.3.2003
137.	C.A.No.5124/2001	State of Haryana v. Balwant Singh	Civil	4.3.2003

38. C.A.No. 7579/99  
Bondar Singh & Ors. v.  
Nihal Singh & Ors. Civil 4.3.2003
139. C.A.No. 7463/93  
State of M.P. & Ors. v.  
M/s. K.C.T. Drinks Ltd. Civil 4.3.2003
140. C.A.No. 8180/95  
State of West Bengal & Anr. v.  
Road Transport Association.  
Silguri & Anr. Tax 25.2.2003

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141.	C.A.No.4731/99 Dwarkanprasad v. Niranjan & Anr.	Civil	4.3.2003
142.	CrI.A.Nos. 1656-63 95 Dy. Chief Controller of Imports & Exports v. Roshanlal Agarwal & Ors.	Criminal	5.3.2003
143.	C.A.No.2664/99, Union of India v. Justice (Retd.) S.N.Saxena & Ors.	Service	20.2.2003
144.	C.A.No.4702/94 International Coach Builders Ltd. v. Karnataka State Financial Corp.	Civil	5.3.2003
145.	C.A.No.10910/96 S.A.Jalaluddin v. Bangalore Development Authority & Anr.	Civil	27.2.2003
146.	C.A.No.865/84 Thakur Prasad (D) through Lrs. v. Raj Karan (D) by Lrs. & Ors.	Civil	4.3.2003
147.	C.A.Nos. 1726-28/2001 P.M.Jetha & Anr. v. State of Kerala & Ors.	Service	5.3.2003
148.	C.A.No.3897/2001 Yogesh Kumar & Ors. v. Government of NTC Delhi & Ors.	Service	5.3.2003
149.	C.A.No.8394/2002 J.M.D.Alloys Ltd. v. Bihar State Electricity Board & Ors.	Civil	6.3.2003

150. C.A.No.66/98			
Tej Kaur & Ors. etc. v.	Civil		7.3.2003
State of Punjab & Ors.			
151. C.A.No.8079/95			
Sanden Vikas (India) Ltd. v.	Tax		4.3.2003
Collector of Central Excise. New Delhi			
152. Crl. A.No.315/2003			
Goaplast Pvt. Ltd. v.	Criminal		7.3.2003
Shri Chico Ursula D'Souza & Anr.			
153. C.A.No.2054/2002			
U.O.I. & Ors. v.	Service		7.3.2003
B.N.Jha			
154. Crl.A.No.331/2003			
Orissa State (Prevention and			
Control of Pollution) Board v.	Criminal		10.3.2003
M/s. Orient Paper Mills & Anr.			
155. C.A.No.879/2000			
Bimlesh Tanwar v.	Service		10.3.2003
State of Haryana & Ors.			
156. C.A.Nos. 4852-53 2000			
N.T.R.University of Health			
Sciences. Vijaywada v.	Education		10.3.2003
G.Babu Rajendra Prasad & Anr.			
157. C.A.Nos.8574-77/2001			
High Court of Gujarat & Anr. v.	Labour		10.3.2003
Gujarat Kishan Mazdoor Panchayat			
& Ors			
158. C.A.No.3985/2001			
State of A.P. v.	Education		10.3.2003
K.Purushotham Reddy & Ors.			
159. C.A.No.7399/2001			
Government of Maharashtra & Ors. v.			
M/s.Deekar's Distillery	Civil		10.3.2003

160.	C.A.No.1787/97		
	Shyama Charan Dash & Ors. v. State of Orissa & Anr.	Service	11.3.2003
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46.	C.A.No.7399/2001		
	Government of Maharashtra & Ors. v. M/s. Deokar's Distillery	159/2003	10.3.2003
47.	C.A.Nos.1296-97/2003		
	The State of Maharashtra & Anr. v. Jalgaon Municipal Council & Ors.	83/2003	14.2.2003
48.	W.P.(C) No.393/2002		
	Supreet Batra & Ors. v. U.O.I. & Ors.	37/2003	27.1.2003
49.	Crl.A.No.82/2003		
	Rizan & Anr. v. State of Chhatisgarh Through The Chief Secretary, Govt. of Chh. Sgarh Raipur.	25/2003	21.1.2003
50.	C.A.No.2957/97		
	Lalit Kumar Jain & Anr. v. Jaipur Traders Corpn. Pvt. Ltd.	230/2002	24.4.2002
51.	I.A.No.670/2001 in W.P.(C) No.202/95		
	K.M.Chinnappa & T.N.Godavarman Thirumal Pad v. U.O.I. & Ors.	449/2002	30.10.2002
52.	Crl.A.No.245/2001		
	Ramilaban Hasmukhbhai Khristi & Anr. v. State of Gujarat	334/2002	14.8.2002

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161.	C.A.No. 6969/99 State of Andhra Pradesh & Ors. Goverdhanlal Pitti	Civil	11.3.2003
162.	C.A.No. 1959/2003 United India Insurance Co.Ltd. v. Lehru & Ors.	Civil	28.2.2003
163.	C.A.No. 5111/2002 Shri Chandra Sahai v. State of Assam & Anr.	Service	4.3.2003
164.	C.A.No. 5982/2001 J.P. Bansal v. State of Rajasthan & Anr.	Service	12.3.2003
165.	C.A.Nos. 2309-14/2003 Secretary, Selection Committee (MBBS) v. N. Anirudhan (Minor) & Ors	Education	12.3.2003
166.	C.A.Nos. 2048-2049/99 Ram Ganga Command Area Development Authority & Anr. v. Sheetal Kumar Vaish & Ors.	Civil	12.3.2003
167.	C.A.No. 7539/99 Canara Bank & Ors. v. Sh. Debasis Das & Ors.	Service	12.3.2003
168.	C.A.No. 2313/2003 Smt. Kanta Devi v. U.O.I. & Anr.	Service	12.3.2003

169.	C.A.No.999/2001		
	Ved Prakash & Ors. v.	Civil	12.3.2003
	Ministry of Industry, Lucknow & Anr.		
170.	C.A.No.2321/2003	Arbitration	12.3.2003
	Mysore Cements Ltd. v. Svedala Barmac Ltd.		
171.	C.A.No. 5662/98		
	Manjunath Anandappa Urf.	Civil	13.3.2003
	Shivappa Hanasi v. Tammanasa & Ors.		
172.	SLP(C) No. 16838/2002		
	Federation of Railway Officers		
	Association & Ors. v. U.O.I.	Civil	13.3.2003
173.	Crl.A.No.383/2003		
	B.S.Joshi & Ors. v.	Criminal	13.3.2003
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174.	C.A.No.4521/2002		
	Hari Shankar Prasad v.	Election	13.3.2003
	Shahid Ali Khan & Ors.		
175.	C.A.Nos. 11441-11442/95	Tax	11.3.2003
	Collector of Central Excise, New Delhi		
	v. M/s. Universal Electrical Industries		
	& Anr.		
176.	C.A.Nos.5472-73/2000		
	D.P.Lon v. Collector of Central	Tax	13.3.2003
	Excise & Customs		
177.	W.P.(C) No. 490/2002		
	People's Union for Civil	Civil	13.3.2003
	Liberties (PUCL) & Anr. v.		
	Union of India & Anr.		
178.	C.A.Nos. 2358-59/2000		
	Commissioner of Central Excise,	Tax	12.3.2003
	Ahmedabad v. Jalaram Wood		
	Crafts (P) Ltd.		

179. C.A.Nos.12009-12042/95

Escorts Ltd. & Anr. v.

Tax

12.3.2003

Collector of Central Excise, Chandigarh

180. C.A.Nos.4230-31/96

Collector of Central Excise, Jaipur

Alcobex Metals

Tax

12.3.2003

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181.	C.A.No.8182/95 State of West Bengal & Anr. v. E.I.T.A.India Ltd. & Ors.	Civil	23.3.2003
182.	C.A.No. 6170/2001 National Agricultural Co-operative Marketing Federation of India Ltd. & Anr. v. U.O.I. & Ors.	Tax	25.3.2003
183.	C.A.No.4589/95 M s. Sunny Industries Pvt. Ltd. v. Collector of Central Excise, Calcutta	Tax	25.3.2003
184.	C.A.No.1295/98 State of U.P. & Anr. v. Chandrapal Singh & Anr.	Service	12.3.2003
185.	Cr.A.No.11/2000 Karamjit Singh v. State (Delhi Administration)	Criminal	26.3.2003
186.	C.A.Nos.7525-7527/2001 Delhi Farming & Construction (P) Ltd. v. Commissioner of Income Tax, Delhi	Tax	26.3.2003
187.	C.A.No. 7531/95 U.O.I. & Anr. v. M's. G.T.C. Industries Ltd., Bombay	Tax	27.3.2003
188.	C.A.No.2538/2003 Rajni Kumar v. Suresh Kumar Malhotra & Anr.	Civil	28.3.2003
189.	C.A.No.5565/95 Seth Chand Ratan v. Pandit Durga Prasad (D) by Lrs. & Ors.	Civil	28.3.2003
190.	C.A.Nos. 1352-53/93 Sahebgouda (D) by Lrs. & Ors. v. Ogeppa & Ors.	Civil	28.3.2003
191.	C.A.No.6535/97 Kacha Kanti Seva Samity & Anr. Shri Kacha Kanti Devi & Ors.	Civil	28.3.2003

192. C.A.No.5933/2000		
Sharda v. Dharmpal	Civil	28.3.2003
193. W.P.(C) No. 160/2002		
Mohd. Aslam @ Bhure	Civil	31.3.2003
v. U.O.I. & Ors.		
194. C.A.No.9140/96		
Collector of Central Excise, N.Delhi	Tax	27.3.2003
v. Guru Nanak Refrigeration Corpn.		
195. C.A.Nos. 1239-44/2001		
S.M.Nilajkar & Ors v	Labour	31.3.2003
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196. C.A.No.4526/99		
T.Lakshmiopathi & Ors. v.	Civil	31.3.2003
P.Nithyananda Reddy & Ors.		
197. C.A.No.1648/2001		
M/s.Polyglass acrylic Mfg. Co. Ltd. v.		
Commissioner Customs.	Tax	31.3.2003
Vishakhapatnam		
198. C.A.No.1527/2000		
D.S.Parvathamma v.	Civil	31.3.2003
A.Srinivasan		
199. C.A.Nos.3615-18/2002		
Rajasthan Public Service Commission		
& Anr v. Harish Kumar	Service	1.4.2003
Purohit & Ors.		
200. C.A.No.6238/98		
The General Manager, Department		
of Telecommunications, Thiruvananthapuram v.		
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Lrs. & Ors.	Civil	1.4.2003

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201.	C.A.Nos.2609-10/2003 Arm Group Enterprises Ltd. v. Waldorf Restaurant & Ors.	Civil	1.4.2003
202.	Crl.A.No.476/2003 The State of Maharashtra v. Dr. Prafulla K. Desai & Anr.	Criminal	1.4.2003
203.	C.A.No.4651/03 Manorey @ Manohar v. Board of Revenue (U.P.) & Ors.	Civil	2.4.2003
204.	C.A.No.6782/2001 Secretary, School Committee, Thiruvalluvar Higher Secondary School v. The Govt. of Tamil Nadu & Ors.	Service	2.4.2003
205.	C.A.No.2631/2003 Roop Kumar v. Mohan Thedani	Civil	2.4.2003
206.	C.A.Nos.2634-35/2003 Sh.O.P.Coudhry v. Rehabilitation Ministry Employees Co-operative House Building Society & Ors.	Civil	2.4.2003
207.	I.A.No.1293 In I.A.No.22 In W.P.(C) No.4677/85 M.C.Mehta v. U.O.I. & Ors.	Civil	2.4.2003
208.	C.A.No.8328/2001 M s.Ahuja Industries Ltd. v. State of Karnataka & Ors.	Civil	3.4.2003
209.	C.A.No.4965/97 The Land Commissioner Madras & Anr. v. Rajeswari	Civil	3.4.2003
210.	C.A.Nos.805-806/99 State of W.B. & Ors. v. Sri Pronab K.Sur & Ors.	Civil	4.4.2003
211.	C.A.Nos.2690-91/2003 B.Janakiramaiah Chetty v. A.K.Parthasarathi & Ors.	Civil	3.4.2003

212. C.A.No.5831/99		
Commissioner of Central Excise v. M.s. M.P.V. & Engg. Industries	Tax	11.3.2003
213. C.A.No.6345/2001		
Laxminarayan R.Bhattad & Ors. v. State of Maharashtra & Anr.	Civil	4.4.2003
214. C.A.No.13417/06		
Utkal University & Anr. v. Jyotirmayee Nayak & Ors.	Service	2.4.2003
215. C.A.No.860/98		
Gunanidhi Martha & Ors. v. Govt. of Orissa & Ors.	Service	27.3.2003
216. C.A.No.6847/97		
M.D., U.P.Land Development Corpn. & Anr. v. Amar Singh & Ors.	Service	1.4.2003
217. C.A.No.7860/96		
U.O.I. v. Indalco Industries	Tax	3.4.2004
218. C.A.No.4149/95		
M/s. Pawan Hans Ltd. v. U.O.I. & Anr.	Civil	8.4.2003
219. P.for SL to A.(Crl.) Nos.2941-42/2002		
Jarnail Singh & Anr. v. State of Haryana & Anr.	Criminal	9.4.2003
220. Crl.A.No.685/2001		
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221.	C.A.Nos.3068-69/2003 Charanjit Kaur (D) through Propsed Lrs. v. U.O.I. & Ors.	Civil	4.4.2003
222.	C.A.Nos.77-80/2001 Commissioner of Excise, Chandigarh v. M/s.Markfed Vanaspati & Allied Industries	Tax	9.4.2003
223.	CrI.A.No.938/95 Superintendent of Police, CBI & Ors. v. Criminal Tapan Kr.Singh		10.4.2003
224.	C.A.No.272/2001 Phool Badan Tiwari & Ors. v. U.O.I. & Ors.	Service	3.4.2003
225.	C.A.No.3322/2003 K.A.Abdul Jaleel v. T.A.Shahida	Civil	10.4.2003
226.	C.A.No.3321/2003 H.Seshadri v. K.R.Natarajan & Anr.	Civil	10.4.2003
227.	C.A.Nos.3531-32/2002 T.A.Ahammed Kabeer v. A.A.Azeez & Ors	Election	10.4.2003
228.	S.L.P.(C)No.689/2002 Bipinchandra parshottamdas Patel (Vakil) v. State of Gujarat & Ors	Civil	14.4.2003
229.	C.A.No.1174/2002 Sukanya Holdings Pvt.Ltd. v. Jayesh H.Pandya & Anr.	Arbitration	14.4.2003

230. C.A.No.3064/2000		
Prayag Upnivesh Awas Evam Nirman Sahkari Samiti Ltd. v. Allahabad Vikas Pradhikaran & Anr.	Civil	16.4.2003
231. C.A.No.1881/99		
V.Swarajyalaxmi & Ors. v. Authorised Officer, Land Reforms, Medak & Ors.	Civil	16.4.2003
232. Crl.A.No.574/2002		
Lalita Jalan & Anr. v. Bombay Gas Co. Ltd & Ors.	Criminal	16.4.2003
233. C.A.Nos. 7200-7201/2001		
Vijaykumar Ramchandra Bahate v. Neela Vijaykumar Bhate	Civil	16.4.2003
234. C.A.No.5866/2000		
State of U.P. & Ors. v. U.P.Sales Tax Officers Grade II Association	Tax	16.4.2003
235. C.A.No.12509/96		
West Bengal Govt. Employees (Food & Supplies) Ltd & Ors. v. Smt.Sulekha Pal (Dey) & Ors.	Civil	16.4.2003
236. C.A.Nos.967-970/90		
U.O.I. v. Chajju Ram (Dead) by Lrs. & Ors.	Civil	16.4.2003
237. C.A.No.4703/99		
Commissioner of Wealth Tax, Hyderabad v. Trustees of HEH	Tax	16.4.2003
238. C.A.Nos.9961-62/95		
Arunkumar & Anr. v. Shriniwas & Ors.	Civil	8.4.2003

239.	C.A.No.105/2002 D.T.C. Ltd. v. Rose Advertising	Arbitration	17.4.2003
240.	Crl.A.No.499/94 Narendra Nath Khaware v. Parasnath Khaware & Ors.	Criminal	17.4.2003
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54.	C.A.No.4702/94 International Coach Builders Ltd. v. Karnataka State Financial Corpn.	144/2003	5.3.2003
55.	C.A.No.2283 of 1998 Shankar Popat Gaidhani v. Hiraman Umaji More (Dead) by Lrs. & Ors.	87/2003	14.2.2003
56.	C.A.No.6087 of 2001 Mithilesh Singh v. Union of India and Ors.	123/2003	27.2.2003
57.	Crl.A.No.1139/2000 State through Narcotics Control Bureau v. Kulwant Singh	73/2003	11.2.2003
58.	C.A.Nos.1050-1051 of 2003 P. Lal v. Union of India and Ors.	58/2003	5.2.2003

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242.	C.A.Nos.8271-72/2001 The Secretary, A.P.P.S.C. v. Y.V.V.R.Srinivasulu & Ors.	Service	17.4.2003
243.	C.A.Nos.4210-11/2000 Orissa University of Agriculture & Technology & Anr. v. Manoj K.Mohanty	Service	17.4.2003
244.	C.A.No.3488/2003 Shiv Shakti Coop. Housing Society, Nagpur v. M/s.Swaraj Developers & Ors.	Civil	17.4.2003
245.	C.A.Nos.6651-54/2000 Kerala State Road Transport Corpn. v. K.O.Varghese & Ors.	Service	17.4.2003
246.	C.A.No.916/99 Shankar K.Mandal & Ors. v. State of Bihar & Ors.	Service	17.4.2003
247.	Crl.A.No.22/2003 Abdul Razak Dawood Dhanani v. U.O.I. & Ors.	Criminal	17.4.2003
248.	C.A.Nos.2884-92/99 Commissioner of Central Excise, Mumbai-III v. M's. I.S.P.Industries Ltd.	Tax	21.4.2003

249.	C.A.No.5072/99 Ali M.K. & Ors. v. State of Kerala & Ors.	Service	22.4.2003
250.	C.A.No.7072/2001 Punjab National Bank v. Indian Bank & Anr.	Civil	22.4.2003
251.	C.A.No.7165/2000 Commissioner of Central Excise, Chandigarh-II v. M/s.Steel Strips Ltd.	Tax	22.4.2003
252.	C.A.No.7263/96 B.Chandrasekhar Reddy (D) by Lrs. v. State of A.P.	Civil	23.4.2003
253.	CrI.A.No.821/2001 U.O.I. & Ors. v. Shivendra Bikaram Singh	Criminal	24.4.2003
254.	C.A.No.3618/2000 Commandant, 11th Battalion, A.P.Special Police (IR), Cuddapah, Cuddapah District v. B.Shankar Nair	Service	25.4.2003
255.	C.A.No.3714/2003 Sh.Bimal N.Desai v. State of Karnataka & Ors.	Civil	25.4.2003
256.	C.A.No.604/2000 State of A.P. & Ors. v. D.Dastagiri & Ors.	Service	23.4.2003
257.	C.A.No.5654/90 State of Bihar v. Kalika Kuer @ Kalika Singh & Ors.	Civil	25.4.2003
258.	T.C.(C) No.8/2000 A.K.Bindal & Anr. v. U.O.I. & Ors.	Civil	25.4.2003

259.	C.A.No.1427/2001 M/s.Sree Narayana Chandrika Trust v. Commissioner of Gift Tax, Kerala	Civil	25.4.2003
260.	Crl.A.No.432/96 State of Rajasthan v. Nathu & Ors.	Criminal	28.4.2003

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59.	C.A.No.59/2001 High Court of Judicature for Rajasthan v. P.P.Singh & Anr.	38/2003	27.1.2003
60.	Crl.A.No.1534/95 K.Shamrao & Ors. v. Assistant Charity Commissioner	133/2003	4.3.2003
61.	C.A.No.1374/2003 Commissioner of Sales Tax & Ors. v. M/s.Subhash & Co.	94/2003	17.2.2003
62.	C.A.No.4702/94 International Coach Builders Ltd. v. Karnataka State Financial Corpn.	144/2003	5.3.2003



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261.	Crl.A.No.929-930/2002 Visveswaran v. State Rep. by S.D.M.	Criminal	28.4.2003
262.	C.A.No.5043/2001 Indian Red Cross Society v. N.D.M.C. & Ors.	Civil	28.4.2003
263.	Crl.A.No.635/2003 Amina v. Hassn Koya	Criminal	28.4.2003
264.	Crl.A.No.641-52/2003 Arvind Yadav v. Ramesh Kumar & Ors.	Criminal	28.4.2003
265.	C.A.No.5228/2000 Management of the Goodwill Girls H.School & Anr. v. Smt.J.Mary Susheela & Ors.	Service	29.4.2003
266.	C.A.No.16897/96 Karnataka Wakf Board v. State of Karnataka	Civil	30.4.2003
267.	C.A.No.7610/99 Commissioner of Central Excise Calcutta v. M's. Sharma Chemical Works	Tax	30.4.2003
268.	C.A.No.1512/2001 Commissioner of Central Excise Calcutta v. M's.Pandit D.P.Sharma	Tax	30.4.2003
269.	C.A.No.9811-12/95 V.P.Pithupitchai & Anr. v. The Special Secretary to the Govt. of T.N.	Civil	30.4.2003
270.	C.A.No.1322/97 Virender Singh & Ors. v. U.O.I.	Civil	22.4.2003
271.	C.A.No.3545 62/91 State of Himachal Pradesh & Ors. Yash Pal Garg by Lrs & Ors.	Tax	30.4.2003

272.	C.A.No.10383/96 U.O.I. & Ors. v. Ex.Flt.Lt.G.S.Bajwa	Service	30.4.2003
273.	Crl.A.No.676/2003 Hira Lal Hari Lal v. C.B.I., New Delhi	Criminal	2.5.2003
274.	C.A.No.2704/2000 Parwati Bai v. Radhika	Civil	1.5.2003
275.	C.A.No.7919/2001 Ramesh Chandra Ardwativa v. Anil Punjwani	Civil	5.5.2003
276.	Suo Motu Contempt Petition (C) No.426/2002 In the Matter of Anil Punjwani	Civil	5.5.2003
277.	Crl.A.No.425/96 Thaman Kumar v. State of Union Territory of Chandigarh	Criminal	6.5.2003
278.	C. A. NO. 7588 OF 1999, Abdul Sattar v. Khutejabi and Ors.	Civil	1.5.2003
279.	C.A. No.5168-70/2001 Commissioner of Central Excise, Bangalore v M/s. Escorts Mahle Ltd.	Tax	6.5.2003
280.	W.P.(C) No. 528/2002 D.Saibaba v. Bar Council of India and Anr.	Civil	6.5.2003

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<u>S.NO.</u>	<u>CAUSE TITLE</u>	<u>SUBJECT</u>	<u>DATE</u>
578*	C.A.No.6266/2000 Hemalatha Gargya v. Commissioner of Income Tax, A.P. & Anr.	Tax	28.11.2002 *(Reportable decided on 9.5.2003)
281.	C.A.No.8951/97 Bakhtawar Trust & Ors. v. M.D.Narayan & Ors.	Civil	6.5.2003
282.	S.L.P.(Crl)No.153/2003 A.C.Razia v. Govt of Kerala & Ors.	Criminal	7.5.2003
283.	C.A.No.5550/97 Nipha Steels Ltd. & Anr. v. West Bengal State Electricity Board & Ors.	Civil	7.5.2003
284.	C.A.No.4020-4023/2003 Union of India & Anr. v. International Trading Co. & Anr.	Civil	7.5.2003
285.	C.A.No.97/2002 M/s.N.S.Nayak & Sons v. State of Goa	Arbitration	8.5.2003
286.	C.A.Nos. 7501-04/97 C.I.T., Bhopal v. M/s. Shelly Products & Anr.	Tax	8.5.2003
287.	C.A.No.4064/2003 S.D.S.Shipping Pvt. Ltd. v. Jay Container Services Co. Pvt. Ltd. & Ors.	Civil	8.5.2003
288.	W.P.(C) No.218/2003 Indira Jaising v. Registrar General, Supreme Court of India & Anr.	Civil	9.5.2003

289.	W.P.(C) No.354/2002 Syed T.A.Naqshbandi and Ors. v. Service State of Jammu & Kashmir & Ors.		9.5.2003
290.	Crl.A.Nos.725-728/2003 State, through Special Cell, New Delhi v. Criminal Navjot Sandhu @ Afshan Guru & Ors.		9.5.2003
291.	C.A.No.4033/2002 Jibontara Ghatowar v. Election Sarbananda Sonowal & Ors.		9.5.2003
292.	C.A.No.5108/2000 Surendra Kumar Sharma v. Service Vikas Adhikari & Anr.		9.5.2003
293.	W.P.(C) No.488/2002 Kapila Hingorani v. Service State of Bihar		9.5.2003
294.	C.A.No.1337/95 Syndicate Bank v. Civil M/s. R.S.R.Engineering Works & Ors.		9.5.2003
295.	W.P.(C) No. 35/2002 Sunil Kumar Goyal v. Service Rajasthan Public Service Commission		9.5.2003
296.	C.A.No.5638/99 Vice Chairman & Managing Director A.P.S.I.D.C. Ltd. & Anr. v. R. Varaprasad & Ors. Service		22.5.2003
297.	C.A.No.812/2002 Vijay Syal & Anr. v. Service State of Punjab & Ors.		22.5.2003



298.	C.A.No.4917/2000 Santosh Kumar v. State of A.P. & Ors.	Service	22.5.2003
299.	C.A.Nos. 4281-89/2003 State of Uttaranchal & Ors. v. Sidharth Srivastava & Ors.	Service	5.6.2003
300.	C.A.No.6092/99 Savitri Cairae v. U.P.Avas Evam Vikas Parishad & Anr.	Civil	1.5.2003

# CORRIGENDUM

# REPORTABLE NO.

64.	C.A.No.3299/2000 M/s. Indian Railway Construction Co. Ltd. v. Mr.Ajay Kumar	124/2003	27.2.2003
65.	C.A.No.1376-77/2003 Banarsi & Ors. v. Ram Phal	93/2003	17.2.2003
66.	Crl.A.No.372/2001 R.Balakrishna Pillai v. State of Kerala	129/2003	28.2.2003
67.	I.A.No.22 in W.P.(C) No.4677/85 M.C.Mehta v. U.O.I. & Ors	207/2003	2.4.2003
68.	C.A.No.1495/93 Agriculture Market Committee, Rajam & Anr. v. Rajam Jute & Oil Millers Association, Rajam	118/2003	25.2.2003
69.	C.A.No.3488/2003 Shivshakti Coop. Housing Society, Nagpur v. M/s. Swaraj Developers & Ors.	244/2003	17.4.2003
70.	C.A.No.8182/95 State of West Bengal & Anr. E.I.T.A.India Ltd. & Ors.	181/2003	5.3.2003
71.	C.A.Nos.6651-54/2000 Kerala State Road Transport Corpn. v. K.O.Varghese & Ors.	245/2003	17.4.2003

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301.	C.A.No.7458/2000 M's.Awaz Prakashan Pvt. Ltd. v. Pramod Kumar Pujari	Civil	2.4.2003
302.	Crl.A.No.666/2002 U.O.I. v. Prakash P.Hinduja & Anr.	Criminal	7.7.2003
303.	C.A.No.4782/96 Sh.Dwarka Prasad Agarwal (D) by Lrs. & Anr. v. B.D.Agarwal & Ors.	Civil	7.7.2003
304.	C.A.No.8263/2001 Rai Vimal Krishna & Ors. v. State of Bihar & Ors.	Tax	7.7.2003
305.	C.A.Nos. 4774-76/96 Dwarka Prasad Agarwal (D) by Lrs. & Anr. v. Ramesh Chandra Agarwal & Ors.	Civil	7.7.2003
306.	C.A.No.4657/2000 Smt. Amiya Bala Paul v. C.I.T., Shillong	Tax	7.7.2003
307.	C.A.Nos.4151-57/2001 Commissioner of Customs, Kolkata v. M/s. Grand Prime Ltd. & Ors.	Tax	7.7.2003
308.	Crl.A.Nos.1299-1300/2002 Malkhansingh & Ors. v. State of M.P.	Criminal	8.7.2003
309.	C.A.No.4060/2001 M's. Om Prakash Bhatia v. Commissioner of Customs, Delhi	Tax	7.7.2003



310.	C.A.No.4420/99 State of W.B. & Ors. v. Pantha Chatterjee & Ors.	Service	7.7.2003
311.	C.A.No.4570/2002 Air India Cabin Crew Association v. Yeshawinee Merchant & Ors	Service	11.7.2003
312.	C.A.No.2452/2000 Municipal Corporation of Greater Mumbai & Anr. v. Kamla Mills Ltd.	Tax	11.7.2003
313.	C.A.No.4570/2003 State of Haryana & Anr. v. Tilak Raj & Ors.	Service	14.7.2003
314.	C.A.No.4571/2003 Ashwani Kumar Singh v. U.P.Public Service Commission & Ors.	Service	14.7.2003
315.	C.A.No.4601/2003 M.P.State Electricity Board v. Smt. Jarina Bee	Service	15.7.2003
316.	C.A.Nos.4312-17/98 State Bank of India & Ors. v. K.P. Subbaiah & Ors.	Service	16.7.2003
317.	C.A.No.4634/2003 Central Bank of India v. Vrajlal Kapurchand Gandhi & Anr	Civil	16.7.2003
318.	C.A.Nos.4655-4809/2003 Food Corporation of India v. Indian Council of Arbitration & Ors. etc. etc.	Arbitration	17.7.2003
319.	C.A.Nos.5005-5006/2003 D.R. Yadav & Anr. v. R.K. Singh & Anr.	Service	18.7.2003
320.	C.A.No.5007/2003 U.O.I. v. Rajiv Kumar	Service	18.7.2003



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S.NO.	CAUSE TITLE	SUBJECT	DATE
321.	Cr.A.No.805/2002 Shivraj Bapuray Jadhav & Ors. v. State of Karnataka	Criminal	15.7.2003
322.	C.A.No.2231/96 Motilal & Anr. v. Niyazuddin (lDead) by l.rs. & Ors.	Civil	21.7.2003
323.	C.A.Nos.2459-61/99 M/s. Bharat Heavy Electrical Ltd. v. State of U.P. & Ors.	Service	21.7.2003
324.	Cr.A.No.845/2002 Chittar Lal v. State of Rajasthan	Criminal	21.7.2003
325.	C.A.No.5147/2003 Ramashray Singh v. New India Assurance Co. Ltd. & Ors.	Civil/Motor Compensation Claim	22.7.2003
326.	C.A.No.3948/94 A.Mohammed Basheer v. State of Kerala & Ors.	Civil	17.7.2003
327.	C.A.No.5576/2000 etc. Chandra Singh v. State of Rajasthan & Anr.	Service	22.7.2003
328.	W.P.(C) No.242/97 John Vallamattom & Anr. v. Union of India	Civil	21.7.2003
329.	W.P.(C) No.222/98 Officers and Supervisors of IDPL v. Chairman & M.D.I.D.P.L. & Ors.	Service	24.7.2003

330.	Crl.A.No.825/2002 Hira Lal & Ors. v. State Govt of (NCT) Delhi	Criminal	25.7.2003
331.	Crl.A.No.1018/2002 P.V.Radhakrishna v. State of Karnataka	Criminal	25.7.2003
332.	Crl.A.No.870/2002 Dhirajbhai Gorabbhai Nayak v. State of Gujarat	Criminal	25.7.2003
333.	C.A.No.5207/2003 State of U.P. & Ors. v. Smt.Gulaichi C.A.No.5010/2003	Service	25.7.2003
334.	Sayed Akhtar v. Abdul Ahad	Civil	18.7.2003
335.	C.A.No.3121/2000 P.M.Punoose v. K.M.Muneeruddin & Ors.	Civil	23.7.2003
336.	Crl.A.No.1149/2002 etc. Krishnan & Anr. v. State Rep. By Inspector of Police	Criminal	28.7.2003
337.	C.A.No.5352/97 etc. Dwarka Prasad & Anr. v. U.O.I. & Ors.	Service	28.7.2003
338.	C.A.No.5223/2003 etc. The State of M.P. & Ors. v. Gopal D.Tirthani & Ors.	Service	28.7.2003
339.	Crl.A.No.913/2003 Safiya v. Govt. of Kerala & Ors.	Criminal	28.7.2003
340.	C.A.No.9520-22/94 State of A.P. & Anr. v. Marri Venkaiah & Ors.	Civil	28.7.2003



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S.NO.	CAUSE TITLE	SUBJECT	DATE
341.	C.A.No.3312/2000 Krishna Mohan Pvt. Ltd. v. Municipal Corpn. of Delhi & Ors.	Civil	28.7.2003
342.	Crl.A.No.62/2003 Pawan Kumar v. State of Haryana	Criminal	23.7.2003
343.	C.A.No.5321/2003 U.O.I. & Ors. v. Rajesh P.U.Puthuvalnikathu & Anr.	Service	30.7.2003
344.	C.A.No.7133/99 Pratibha Nema & Ors. v. State of M.P. & Ors.	Civil	30.7.2003
345.	C.A.No.175/97 Nellor Marthandam Vellalar & Ors. v. The Commissioner, Hindu Religions and Charitable Endowments & Ors.	Civil	30.7.2003
346.	C.A.No.176/97 Sankar Ram & Co. v. Kasi Naicker & Ors.	Civil	30.7.2003
347.	C.A.No.1811-13/97 S.R.Radhakrishnan & Ors. v. Neelamegam	Civil	31.7.2003
348.	C.A.No.5315/2003 Hythro Power Corpn. Ltd. v. Delhi Transco Ltd.	Civil	30.7.2003
349.	Crl.A.No.421/96 State of Rajasthan v. Bhawani & Anr.	Criminal	31.7.2003
350.	C.A.No.2455/97 Smt.Kesar Devi v.	Tax	31.7.2003

351. C.A.No.5453/2003  
The Divisional Controller, KSRTC Civil/ 31.7.2003  
v. Mahadeva Shetty & Anr. (Motor Compensation Claim)
352. R.P.(C) Nos. 1111-1112/2002  
in C.A.Nos.3337-3338/2002 Civil 31.7.2003  
Chairman, State Bank of India & Anr.  
v. All Orissa State Bank Officers  
Association & Anr.
353. CrI.A.No.1015/2002  
Sucha Singh & Anr. v. Criminal 31.7.2003  
State of Punjab
354. W.P.No.302/2001  
Javed & Ors. v. Election 30.7.2003  
State of Haryana & Ors.
355. CrI.A.No.392/2002  
Gurdev Singh & Anr. v. Criminal 1.8.2003  
State of Punjab
356. C.P.No.261/2000 in C.A.No.4797/98  
David Jude v. Hannah Grace Jude Civil 30.7.2003  
& Ors.
357. CrI.A.No.838/2002  
Golakonda Venkateswara Rao v. Criminal 1.8.2003  
State of A.P.
358. C.A.Nos. 3253-58/91  
M.S.Madhusoodhanan & Anr. v. Civil 1.8.2003  
Kerala Kaumudi Pvt. Ltd. & Ors.
359. C.A.Nos. 3375-84/2002  
Secretary, Ministry of Chemicals & Civil 1.8.2003  
Fertilizers Govt. of India v.  
M/s. Cipla Ltd. & Ors.
360. C.A.Nos. 5485-86/93  
Sheikh Noor & Anr. v. Civil 4.8.2003  
Sheikh G.S.Ibrahim (Dead) by Lrs.

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S.NO.	CAUSE TITLE	SUBJECT	DATE
361.	C.A.No.6946/96 Bihar Public Service Commission & Anr. v. Vinoy Kumar Singh & Anr.	Service	4.8.2003
362.	C.A.No.3301/2002 State of Maharashtra & Ors. v. Maimuma Banu & Ors.	Civil	5.8.2003
363.	CrI.A.No.948/2003 State (Govt. of NCT of Delhi) v. Prem Raj	Criminal	5.8.2003
364.	C.A.No.5523/2003 State of Haryana & Anr. v. Jasbir Kaur & Ors.	Civil/(Motor Compensation Claim)	5.8.2003
365.	C.A.No.12645/96 Madan Mohan Rajgarhia v. M/s. Mahendra R.Shah & Bros & Anr.	Civil	31.7.2003
366.	C.A.No.5556/2003 T.K.Rangarajan v. Government of Tamil Nadu & Ors.	Service	6.8.2003
367.	C.A.No.14152/96 State of U.P. v. Allied Constructions	Civil	31.7.2003
368.	C.A.No.359/97 M/s. Khaitan Electrical Ltd. v. Collector of Central Excise, New Delhi	Tax	6.8.2003
369.	C.A.No.5568-70/2003 Rajesh D.Darbar & Ors. v. Narasingrao Krishnaji Kulkarni & Ors.	Civil	6.8.2003
370.	C.A.No.2416/2000 Commissioner of Central Excise, Chennai v. M/s. T.V.S.Suzuki Ltd., Hosur	Tax	6.8.2003

371. CrI.A.No.1227/2002 Sanaboina Satyanarayana v. Government of A.P. & Ors.	Criminal	29.7.2003
372. W.P.(C) No.239/98 Hon'ble Sh.Rangnath Mishra v. U.O.I. & Ors.	Civil	31.7.2003
373. C.A.No.7670/97 State of Orissa v. Nityanand Satpathy & Ors.	Civil	31.7.2003
374. C.A.Nos.1681-86/2003 State of Orissa v. Lochan Nayak (Dead) by l.rs.	Civil	31.7.2003
375. C.A.No.6110/2003 Surya Dev Rai v. Ram Chander Rai & Ors.	Civil	7.8.2003
376. C.A.Nos.6121-58/2003 IIMT Ltd & Anr. v. P.Subbarayudu & Ors.	Service	7.8.2003
377. C.A.No.123/2003 Chandy Varghese & Ors. v. K.Abdul Khader & Ors.	Civil	8.8.2003
378. C.A.No.8448/2002 Dipak Chandra Ruhidas v. Chandan Kumar Sarkar	Civil	31.7.2003
379. C.A.No. 6626/95 V.Dandapani Chettiar v. Balasubramanian Chettiar (D) by l.rs. & Ors.	Civil	8.8.2003
380. CrI.A.No.248/2003 The Government of N.C.T. of Delhi v. Jaspal Singh	Criminal	8.8.2003

CORRIGENDUM:

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72. C.A.No.2631/2003		
Roop Kumar v. Mohan Thedani	205/2003	2.4.2003
73. C.A.No.8501/2002		
M/s. Indian Charge Chrome Ltd. & Ors.	548/2002	17.12.2002
v. Union of India & Ors.		
74. C.A.No.8501/2002		
M/s. Indian Charge Chrome Ltd. & Ors.	548/2002	17.12.2002
v. Union of India & Ors.		
75. C.A.No.4782/96		
Dwarka Prasad Agrawal (D)	303/2003	7.7.2003
by Lrs. & Ors. v. B.D.Agarwal & Ors.		
76. C.A.No.5223/2003		
The State of M.P. & Ors. v.	338/2003	28.7.2003
Gopal D.Thirhani & Ors.		
77. Crl.A.No.1149/2002		
Krishnan & Anr. v.		
State Rep. by Inspector of Police	356/2003	28.7.2003
78. C.A.No.152/94		
Subhashis Bakshi & Ors. v.	84/2003	14.2.2003
West Bengal Medical Council & Ors.		
79. C.A.No.879/2000		
Bimlesh Tanwar v.		
State of Haryana & Ors.	155/2003	10.3.2003
80. Crl.A.No.845/2002		
Chittar Lal v. State of Rajasthan	324/2003	21.7.2003
81. C.A.No. 5223/2003		
The State of M.P. & Ors. v.	338/2003	28.7.2003
Gopal D.Thirhani & Ors.		
82. C.A.No.5638/99		
The Vice Chairman & M.D., A.P.S.I.D. Ltd. & Anr.		
v. R.Varaprasad & Ors.	296/2003	22.5.2003



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<u>S.NO.</u>	<u>CAUSE TITLE</u>	<u>SUBJECT</u>	<u>DATE</u>
381.	Crl.A.No.819/96 Surinder Singh v. The State of Punjab	Criminal	8.8.2003
382.	C.A.No.4167/2003 I.I.T.T. College of Engineering v. State of H.P. & Ors.	Education	8.8.2003
383.	Crl.A.No.376/2003 Amit @ Ammu v. State of Maharashtra	Criminal	6.8.2003
384.	C.A.No.6295/2003 United India Insurance Co. Ltd. v. Jyotsnaben Sudhirbhai Patel & Ors. (Motor Accident Claim)	Civil/	11.8.2003
385.	Crl.A.No.270/96 Babu S/o Raveendran v. Babu S/o Bahuleyan & Anr.	Criminal	11.8.2003
386.	C.A.No.4094/98 Jawaharlal Nehru Technological University v. Smt. T.Sumalatha & Ors.	Service	11.8.2003
387.	C.A.No.5992/97 Mishra Dhatu Nigam Ltd. etc. v. M.Venkataiah & Ors. etc.	Service	13.8.2003
388.	C.A.No.8703/97 G.Varandani v. Kurukshetra University & Ors.	Service	13.8.2003
389.	C.A.No.5990/97 National Thermal Power Corporation Ltd. v. Karri Pothuraju & Ors.	Civil	13.8.20

390. C.A.No.2769/99		
U.O.I. v. R.Padmanabhan	Tax	13.8.2003
391. CrI.A.Nos. 815-816/96		
State of Rajasthan v. Rajaram	Criminal	13.8.2003
392. CrI.A.No.825/96		
State of M.P. v. Mansingh & Ors.	Criminal	13.8.2003
393. W.P.(C) No. 350/93		
Islamic Academy of Education and Anr. v. State of Karnataka & Ors.	Education	14.8.2003
394. C.A.No.6387-88/2003		
A.K.Soumini v. State Bank of Travancore & Anr.	Service	14.8.2003
395. C.A.No.15697/96		
Ramabai Padmakar Patil (D) through Lrs & Ors. v. Rukminibai Vekhande & Ors.	Civil	14.8.2003
396. CrI.A.No.829/96		
State of Punjab v. Karnail Singh	Criminal	14.8.2003
397. C.A.No.2148/94		
Guruvayur Devaswom Managing Committee & Anr. v. C.K.Rajan & Ors.	Civil	14.8.2003
398. C.A.No.10461/83		
State of Maharashtra & Anr. v. B.E.Billimoria & Ors.	Civil	14.8.2003
399. C.A.No.1712/97		
Nawab Syed Murtaza Ali Khan (Dead) by Lrs. v. Prescribed Authority, Rampur & Ors.	Civil	18.8.2003
400. C.A.No.2702/97		
U.O.I. v. Kuldip Singh Permer & Ors.	Service	18.8.2003



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83.	C.A.Nos.1681-86/2003 State of Orissa v. Lochan Nayak (Dead) by Lrs.	374/2003	31.7.2003
84.	C.A.Nos.4151-57/2001 Commissioner of Customs, Kolkata v. M/s. Grand Prime Ltd.	307/2003	7.7.20003
85.	C.A.No.7072/2001 Punjab National Bank v. Indian Bank & Anr.	250/2002	22.4.2002
86.	C.A.No.4570/2002 Air India Cabin Crew Association v. Yeshawinee Merchant & Ors.	311/2003	11.7.2003
88.	C.A.Nos.5568-70/2003 Rajesh D.Darbar & Ors. v. Narasimgarao Krishnaji Kulkarni & Ors.	369/2003	6.8.2003
89.	S.L.P.(C) No.689/2002 Bipinchandra Parshotamdas Patel (Vakil) v. State of Gujarat & Ors.	228/2003	14.4.2003



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<u>S.NO.</u>	<u>CAUSE TITLE</u>	<u>SUBJECT</u>	<u>DATE</u>
401.	C.A.No.2539/98 B.P.Sharma v. U.O.I & Ors	Service	18.8.2003
402.	C.A.Nos.10787-95/96 Ibrahimpattam Taluk Vyavasaya Collie Sangham v. K.Suresh Reddy & Ors.	Civil	19.8.2003
403.	Crl.A.No.786/2002 Madan Lal & Anr. v. State of H.P.	Criminal	19.8.2003
404.	Crl.A.Nos.151-58/96 State of M.P. v. Kedia Leather & Liquor Ltd. & Ors.	Criminal	19.8.2003
405.	C.A.No.3431/2000 State Bank of India v. L.Kannaiah & Ors.	Service	19.8.2003
406.	C.A.No.659/2003 Punit Rai v. Dinesh Chaudhary	Election	19.8.2003
407.	C.A.Nos.3729-30/99 Ludhiana Central Co-operative Bank Ltd. v. Amrik Singh & Ors.	Service	19.8.2003
408.	Crl.A.No.1491/95 S.R.Ramaraj v. Special Court, Bombay	Criminal	19.8.2003
409.	C.A.No.6508/2003 M/s. Bhilai Rerollers, etc. v. M.P.Electricity Board & Ors.	Civil	19.8.2003
410.	R.P.(C) No.436/2003 in C.A.No.8444/2002 Vinod Kumar v. Prem Lata	Civil	19.8.2003

411. C.A.No.2025/97 Bihar State Mineral Dev. Corpn & Anr. v.Encon Builders (I) Pvt. Ltd.	Civil	21.8.2003
412. C.A.No.4301/99 State of Haryana & Ors. v. Indira Kumari	Service	13.8.2003
413. C.A.Nos.1366-74/2001 M/s. Widia (India) Ltd. & Ors. v. The State of Karnataka & Ors.	Tax	21.8.2003
414. W.P.(C) No.433/98 A.I.Railway Parcel & Goods Porters Union v. U.O.I. & Ors.	Service	22.8.2003
415. CrI.A.No.830/96 State of Rajasthan v. Kheraj Ram	Criminal	22.8.2003
416. CrI.A.No.734/2003 Nazir Khan & Ors. v. State of Delhi	Criminal	22.8.2003
417. C.A.No.5203/2000 Calcutta Gujrati Education Society & Anr. v. Calcutta Municipal Corpn. & Ors.	Tax	25.8.2003
418. C.A.No.5199/97 M.Rangasamy v. Rengammal & Ors.	Civil	25.8.2003
419. C.A.No.6733/2003 State of Rajasthan & Ors. v. Anand Prakash Solanki	Service	25.8.2003
420. CrI.A.No.1051/2003 Gazi Saduddin v. State of Maharashtra & Anr.	Criminal	25.8.2003

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<u>NO.</u>	<u>CAUSE TITLE</u>	<u>SUBJECT</u>	<u>DATE</u>
21.	Crl.A.No.231/96 The State of Bihar & Anr. v. Kedar Sao & Anr.	Criminal	25.8.2003
422.	Crl.A.No.854/96 Augustine Saldanha v. State of Karnataka	Criminal	26.8.2003
423.	C.A.No.34/95 Delhi Development Authority v. Mrs. Vijaya C.Gurshaney & Anr.	Civil	26.8.2003
424.	C.A.No.9169/96 Om Prakash Sood v. U.O.I. & Anr.	Service	26.8.2003
425.	SLP(C) No.....(CC 7122/2003) Satya Ranjan Majhi & Anr. v. State of Orissa & Ors.	Civil	25.8.2003
426.	C.A.No.2732/97 Gwalior Dugdha Sangh Sahakari Ltd. v. G.M., Govt. Milk Scheme, Nagpur & Ors.	Civil	21.8.2003
427.	Crl.A.No.1068/2003 Lalu Prasad @ Lalu Prasad Yadav v. State through C.B.I.(A.H.D.) Ranchi, Jharkhand	Criminal	26.8.2003
428.	Crl.A.No.749/99 Munna v. State (N.C.T. of Delhi)	Criminal	27.8.2003
429.	Crl.A.No.124/2003 State of Maharashtra v. Kashirao & Ors.	Criminal	27.8.2003

430.	Crl.A.No.1358/2002 Kaliyaperumal & Anr. v. State of T.N.	Criminal	27.8.2003
431.	C.A.No.2089/2000 D.S.Lakshmaiah & Anr. v. L.Balasubramanyam & Anr.	Civil	27.8.2003
432.	C.A.No.7536/97 Balram Kumawat v. U.O.I. & Ors.	Civil	27.8.2003
433.	C.A.No.7533/97 Indian Handicrafts Emporium & Ors. v. U.O.I. & Ors.	Civil	27.8.2003
434.	C.A.No.6799/2003 Rafique Bibi (D) by Lrs. v. Sayed Waliuddin (D) by Lrs. & Ors.	Civil	28.8.2003
435.	C.A.No.6797/2003 State of Manipur v. Md.Rajaodin	Service	28.8.2003
436.	C.A.Nos. 5647-48/97 Bharat Coking Coal Ltd. v. M/s. Annapurna Construction	Civil	29.8.2003
437.	C.A.No.7228/2001 CCI Chambers Co-op. Hsg. Society Ltd. v. Development Credit Bank Ltd.	Civil	29.8.2003
438.	C.A.No.6844/2003 State of Orissa & Ors. v. Rajendra Kumar Das & Anr.	Service	29.8.2003
439.	C.A.Nos.6365-82/99 Tejumaal Bhojwani & Ors. v. State of U.P.	Civil	26.8.2003

440.	Writ Petition No.295/92		
	N.D.Jayal & Anr. v.	Civil	1.9.2003
	U.O.I. & Ors.		

CORRIGENDUM:

REPORTABLE NO.

90.	C.A.Nos.6365-82/99		
	Tejuma! Bhojwani & Ors. v.	439/2003	26.8.2003
	State of U.P.		

92.	C.A.No.7610/99		
	Commissioner of Central Excise,	267/2003	30.4.2003
	Calcutta v. M/s. Sharma Chemical		
	Works		

93.	W.P.(C) No.317/93		
	T.M.A.Pai Foundation & Ors.	452/2002	31.10.2002
	v. State of Karnataka & Ors.		





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<u>S.NO.</u>	<u>CAUSE TITLE</u>	<u>SUBJECT</u>	<u>DATE</u>
441.	Crl.A.No.54/2003 Sukhdev Singh v. Delhi State (Govt. of NCT of Delhi)	Criminal	1.9.2003
442.	C.A.No.4170/99 Smt.Kanak & Anr. v. U.P. Avas Evam Vikas Parishad & Ors.	Civil	1.9.2003
443.	C.A.No.2809/79 Sohan Lal Gupta (D) thr. Lrs. & Ors. v. Smt Asha Devi Gupta & Ors.	Civil	1.9.2003
444.	C.A.No.3068/97 Regional Officer, C.B.S.E. v. Ku.Sheena Peethambaran & Ors.	Education	1.9.2003
445.	Crl.A.No.603/2002 Vajrapu Sambayya Naidu & Ors. v. State of A.P. & Ors.	Criminal	2.9.2003
446.	Crl.A.No.904/96 Kailash Kumar Sanwatia v. The State of Bihar & Anr.	Criminal	2.9.2003
447.	C.A.Nos. 6915-16/2003 National Insurance Co. Ltd. v. Ajit Kumar & Ors.	Civil	2.9.2003
448.	C.A.Nos.6913-14/2003 M.A.Murthy v. State of Karnataka & Ors.	Service	2.9.2003
449.	C.A.No.4123/99 National Highway Authority of India v. M/s. Ganga Enterprises & Anr.	Civil	28.8.2003
450.	C.A.No.6950/2003 State of Haryana & Anr. v. Ankur Gupta	Service	3.9.2003

451.	Crl.A.No.901/96 Sou. Vijaya @ Baby v. State of Maharashtra	Criminal	3.9.2003
452.	SLP(C) No.15450/2003 Justice P.Venugopal v. U.O.I. & Ors.	Civil	1.8.2003
453.	C.A.No.7011/2003 Bihar State Housing Board v. State of Bihar & Ors.	Civil	5.9.2003
454.	Crl.A.No.896/96 Surinder Singh & Anr. v. State of U.P.	Criminal	5.9.2003
455.	C.A.No.1877/97 M/s. Gokuldas exports v. M/s. Jain Exports (P) Ltd.	Civil	4.9.2003
456.	Crl.A.Nos.888-891/2003 State of Gujarat v. Salimbhai Abdulgaffar Shaikh & Ors.	Criminal	8.9.2003
457.	Crl.A.No.857/96 Smt.Shakila Abdul Gafar Khan v. Vasant Raghunath Dhoble & Anr.	Criminal	8.9.2003
458.	C.A.No.2731/97 Union Territory of Chandigarh & Ors. v. Rajesh Kumar Basandhi & Anr.	Service	8.9.2003
459.	Crl.A.No.702/2002 Hem Raj & Anr. v. State of Punjab	Criminal	9.9.2003
460.	C.A.No.4106/2002 V.K.Majotra v. U.O.I. & Ors.	Service	9.9.2003

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<u>S.NO.</u>	<u>CAUSE TITLE</u>	<u>SUBJECT</u>	<u>DATE</u>
461.	C.A.No.7133/2003 Krishna Mohan Kul @ Nani Charan Kul & Anr. v. Pratima Maity & Ors.	Civil	9.9.2003
462.	C.A.No.2477/97 State of West Bengal v. Amritlal Chatterjee	Civil	3.9.2003
463.	C.A.Nos.8337-39/97 U.O.I. v. M/s. V.Pundarikakshudu & Sons and Anr.	Civil	9.9.2003
464.	C.A.No.4034/2001 Ram Preeti Yadav v. U.P.Board of High School & Intermediate Education & Ors.	Education	3.9.2003
465.	CrI.A.No.1636/96 Laxman Singh v. Poonam Singh & Ors.	Criminal	10.9.2003
466.	C.A.Nos.16727-28/96 Thirumala Tirupati Devasthanams & Anr. v. Thallappaka Anantha Charyulu & Ors.	Civil	10.9.2003
467.	C.A.Nos. 11961-63/96 Santosh Kumar & Ors. v. G.R.Chawla & Ors.	Service	10.9.2003
468.	C.A.Nos. 2050-52/96 Baitarani Gramiya Bank v. Pallab Kumar & Ors.	Service	10.9.2003
469.	W.P.(C) No.301/2000 Centre for Enquiry Into Health and Allied Themes (CEHAT) & Ors. v. U.O.I & Ors.	Civil	10.9.2003

470.	C.A.Nos.13382-83/96 Bhavsingh (D) by Lrs. v. Keshar Singh & Ors.	Civil	10.9.2003
471.	C.A.No.5689/94 Saligram Khirwal v. U.O.I. & Ors.	Civil	9.9.2003
472.	Crl.A.No.1646/96 State of M.P. v. Ghanshyam Singh	Criminal	11.9.2003
473.	C.A.No.2508/97 Rachakonda Venkat Rao & Ors. v.R.Satya Bai (D) by Lr & Anr.	Civil	11.9.2003
474.	C.A.No.2700/97 N.D.M.C. v. Satish Chand (D) by Lr. Ram Chand	Tax	11.9.2003
475.	C.A.No.7269/2003 Shiv Kumar Bhagat v. State of Bihar & Ors.	Tax	12.9.2003
476.	C.A.No.7280/2003 K.Samantaray v. National Insurance Co. Ltd.	Service	12.9.2003
477.	C.A.No.5764/97 The New India Assurance Co. Ltd. v. C.Padma & Anr.	Civil/ Motor Accident Claim	12.9.2003
478.	C.A.Nos.5307-11/93 Hardie Trading Ltd. & Anr. v. Addisons Paint and Chemicals Ltd.	Civil	12.9.2003
479.	Crl.A.No.452/2003 Megh Singh v. State of Punjab	Criminal	15.9.2003
480.	C.A.No.7360/2003 U.O.I. & Anr. v. Punjab Singh & Anr.	Service	15.9.2003

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<u>S.NO.</u>	<u>CAUSE TITLE</u>	<u>SUBJECT</u>	<u>DATE</u>
481.	C.A.Nos.3829-30/2000 Rajgopal (D) by I.rs v Kishan Gopal & Anr.	Civil	16.9.2003
482.	W P (C) No 171/2003 Centre for Public Interest Litigation v U O I & Anr	Civil	16.9.2003
483	Crl A No 142/94 The Assistant Commissioner, Assessment-II, Bangalore & Ors v. M/s. Velliappa Textiles Ltd. & Ors.	Criminal	16.9.2003
484	C A Nos 3348-49/93 Shiromani Gurdwara Parbandhak Committee v Mahant Harnam Singh C (Dead), M.N.Singh & Ors.	Civil	16.9.2003
485	C A No 7396-97/2003 Mithailal Dalsangar Singh & Ors. v. Annabai Devram Kini & Ors.	Civil	16.9.2003
486	C A No 1807/2003 Harish Verma & Ors. v. Ajay Srivastava & Anr	Education	16.9.2003
487	C A No 1792/97 State of Bihar v. Lal Krishna Advani & Ors	Civil	16.9.2003
488	C A Nos 2305-06/99 State of Punjab & Ors. v. Manjit Singh & Ors.	Service	16.9.2003
489	Crl A No 1712/96 Anwar Chand Sab Nanadikar v. State of Karnataka	Criminal	17.9.2003

490	C A Nos 6486-94/2001 K.R.Anitha & Ors. v. Regional Director, E.S.I. Corporation & Anr.	Civil	17.9.2003
491	Crl A No 1190/2001 Damodar v. State of Rajasthan	Criminal	18.9.2003
492	Crl A Nos 1318-19/2002 Jitendra & Anr. v. State of M.P.	Criminal	18.9.2003
493	C A No 14870/96 Jupudi Venkata Vijaya Bhaskar v. Jupudi Kesava Rao (D) & Ors.	Civil	19.9.2003
494	Crl A No 486/2003 M.Prabhulal v. The Assistant Director Directorate of Revenue Intelligence	Criminal	19.9.2003
495	Crl A Nos 66-67/97 Kamma Otukunta Ram Naidu v. Chereddy Pedda Subha Reddy & Ors	Criminal	19.9.2003
496	I A No 376/2003 In W P (C) No 13381/04 M.C.Mehta v. U.O.I. & Ors. On behalf of Monitoring Committee	Civil	18.9.2003
497	Crl A No 1197/2003 M.Narayandas v. State of Karnataka & Ors.	Criminal	19.9.2003
498	C A No 640/98 State of Maharashtra v. M/s S D Shinde & Co	Civil	17.9.2003
499	C A No 1768/2002 State of Punjab & Ors. v. Charanjit Singh	Service	17.9.2003
500	C A Nos 7938-40/2003 State of Orissa & Ors. v. Bhikari Charan Khuntia & Ors	Service	22.9.2003

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<u>S.NO.</u>	<u>CAUSE TITLE</u>	<u>SUBJECT</u>	<u>DATE</u>
501.	Crl.A.No.907/96 State of Punjab v. Pohla Singh & Anr.	Criminal	22.9.2003
502.	C.A.No.8431/97 M/s. Continental Construction Ltd v. State of U.P.	Civil	22.9.2003
503.	C.A.No.7977/2003 Prakash H Jain v. Ms. Marie Fernandes	Civil	23.9.2003
504.	C.A.No.2537/2001 M/s. U.P. Drugs & Pharmaceuticals Co. Ltd. v. Ramanuj Yadav & Ors	Service	23.9.2003
505.	C.A.No.13393/96 Vijay Lakshmi v. Punjab University & Ors.	Service	23.9.2003
506.	C.A.No. 2898/2001 Nawal Singh v. State of U.P. & Anr.	Service	23.9.2003
507.	C.A.Nos.7633-35/97 S.P.Badrinath v. Govt of A.P. & Ors.	Service	16.9.2003
508.	Crl.A.Nos. 1638-39/96 State of U.P. v. Babu & Ors	Criminal	24.9.2003
509.	C.A.No.1247/98 K.K.John v. State of Goa	Civil	18.9.2003
510.	I.A.Nos.5-6 & 7-14 In C.A.Nos. 599-600/2002 P.C.Kesavan Kuttynayar v. Harish Bhalla & Ors.	Education	23.9.2003
511.	C.A.No.2059/2002 Ramanuj Prasad v. Coal India Ltd. & Ors.	Service	17.9.2003

512.	Crl.A.No.1249/2002 Vivek Gupta v. Central Bureau of Investigation & Anr	Criminal	25.9.2003
513.	Crl.A.No.756/2003 Durga Prasad Gupta v. The State of Rajasthan through C.B.I.	Criminal	25.9.2003
514.	C.A.No.8720/97 K.Ethirajan (D) by Lrs. v. Lakshmi & Ors.	Civil	26.9.2003
515.	C.A.No.5525/2000 Grid Corpn of Orissa & Ors. v. Rasananda Das	Service	26.9.2003
516.	C.A.Nos. 6605-06/2002 M/s. Mangat Singh Trilochan Singh thr. Mangat Singh (D) thr. Lrs. & Ors v. Satpal	Civil	26.9.2003
517.	C.A.No.8080/2003 Illachi Devi (D) by Lrs. & Ors. v. Jain Society Protection of Orphans India & Ors.	Civil	26.9.2003
518.	C.A.No.3602/2002 P.T.Rajan v. T.P.M.Sahir & Ors.	Election	26.9.2003
519.	C.A.No.106/2001 Federal Bank Ltd. v. Sagar Thomas & Ors.	Service	26.9.2003
520.	C.A.No.3453/2002 Jindal Stripe Ltd. & Ors. v. State of Haryana & Ors.	Tax	26-9-03

CORRIGENDUM:-

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95.	C.A.Nos.6121-6158/2003 H.M.T.Ltd. & Anr. v. P.Subbarayudu & Ors.	376/2003	7.8.2003
96.	Crl.A.No.857/96 Smt. Shakila Abdul Gafar Khan v. Vasant Raghunath Dhoble & Anr	457/2003	8.9.2003
97.	Crl.A.No.54/2003 Sukhdev Singh v. Delhi State (Govt. of N.C.T. of Delhi)	441/2003	1.9.2003



98. CrI.A.No.825/2002  
Hira Lal & Ors. v. 330/2003 25.7.2003  
State (Govt. of NCT Delhi)
99. C.A.No.4106/2002  
V.K.Majotra v. U.O.I. & Ors. 460/2003 9.9.2003
100. C.A.No. 4702/94  
International Coach Builders Ltd. 144/2003 5.3.2003  
v. Karnataka State Financial Corpn.
101. I.A.No.376/2003  
In W.P.(C) No.1338/84  
M.C.Mehta v. U.O.I. & Ors. 496/2003 18.9.2003  
on behalf of Monitoring Committee



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<u>S.NO.</u>	<u>CAUSE TITLE</u>	<u>SUBJECT</u>	<u>DATE</u>
521.	Crl.A.Nos. 2032-33/96 Ramakant Rai v. Madan Rai & Ors.	Criminal	25.9.2003
522.	Crl.A.No.1721/96 State of Haryana v. Jagbir Singh & Anr.	Criminal	26.9.2003
523.	C.A.Nos.8104-8105/2003 Jineshwardas (D) through Lrs. & Ors. v. Smt. Jagrani & Anr.	Civil	26.9.2003
524.	C.A.No.8103/2002 S M & T Consultants, Secunderabad v. S.Y. Nawab & Anr.	Civil	26.9.2003
525.	Crl.A.Nos. 2000-2001/96 Raj Kishore Jha v. State of Bihar & Ors.	Criminal	7.10.2003
526.	C.A.Nos.8161-62/2003 U.O.I. & Anr. v. Azadi Bachao Andolan & Anr.	Tax	7.10.2003
527.	W.P.(C) No. 611/92 Prafulla Kumar Das & Ors. v. State of Orissa & Ors.	Service	7.10.2003
528.	C.A.No.12450/96 Md.Mohammad Ali (D) by Lrs. v. Sri Jagadish Kalita & Ors.	Civil	7.10.2003
529.	C.A.No.8173/2003 U.O.I. v. Tarit Ranjan Das	Service	8.10.2003
530.	C.A.No.5466/2002 General Manager, Kisan Sahkari Chini Mills Ltd., Sultanpur U.P. v. Satrugan Nishad & Ors.	Service	8.10.2003

531.	C.A.No.4722/97 Delhi Administration & Ors. v. Madan Lal Nangia & Ors.	Civil	5.10.2003
532.	C.A.No.1725/97 M.D., Army Welfare Housing Organisation v. Sumangal Services Pvt. Ltd.	Civil	8.10.2003
533.	C.A.No.10585/96 R.V.E.Venkatachala Gounder v. Arulmigu Viswesaraswami & V.P.Temple & Anr.	Civil	
534.	C.A.Nos.3988-89/2001 Common Cause v. U.O.I. & Ors.	Civil	8.10.2003
535.	C.A.No.7941/95 Citi Bank N.A. v. Standard Chartered Bank & Ors.	Civil	8.10.2003
536.	Cr.A.No.1136/2003 R.Indira v. Dr.G.Adinarayana	Criminal	9.10.2003
537.	C.A.No.1996/98 Pooran Chand Nangia v. National Fertilizers Ltd.	Civil	8.10.2003
538.	C.A.No.8216/2003 Ram Chandra Singh v. Savitri Devi & Ors.	Civil	9.10.2003
539.	C.A.No.6478/2001 Pure Helium India Pvt. Ltd. v. Oil & Natural Gas Commission	Civil	9.10.2003
540.	C.A.No.2166/98 Chairman and M.D., B.P.L. Ltd. v. S.P.Gururaja & Ors.	Civil	13.10.2003

CORRIGENDUM:	<u>REPORTABLE NO.</u>	
102. C.A.No.8431/97 M/s. Continental Construction Ltd. v. State of U.P.	502/2003	22.9.2003
103. C.A.Nos.4774-76/96 Dwarkanprasad Agrawal (D) by Lrs. & Anr. v. Ramesh Chandra Agrawal & Ors.	305/2003	7.7.2003
104. C.A.No.2452/2000 Municipal Corporation of Greater Mumbai & Anr. v. Kamla Mills Ltd.	312/2003	11.7.2003
105. C.A.No.4782/96 Sh.Dwarka Prasad Agrawal (D) by Lrs. & Anr. v. B.D.Agrawal & Ors.	303/2003	7.7.2003
106. C.A.No.1768/2002 State of Punjab v. Charanjit Singh	499/2003	



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<u>S.NO.</u>	<u>CAUSE TITLE</u>	<u>SUBJECT</u>	<u>DATE</u>
541.	Crl.A.No.21/2002 U.O.I. v. Paul Manickam & Anr.	Criminal	13.10.2003
542.	C.A.No.3496/96 Azeez Sait 'dead' by Lrs. & Ors. v. Aman Bai & Ors.	Civil	13.10.2003
543.	C.A.No.5282/2002 South Eastern Coalfields Ltd. v. State of M.P. & Ors.	Civil	13.10.2003
544.	Crl.A.No.280/2003 Sohan Lal @ Sohan Singh & Ors. v. State of Punjab	Criminal	14.10.2003
545.	C.A.Nos.321-22/98 State of Kerala & Ors. v. K.Sarojini Amma & Ors.	Civil	14.10.2003
546.	C.A.No.4767/97 Central Dairy Farm v. Glindia Ltd. & Ors.	Civil	14.10.2003
547.	C.A.No.14572/96 Chairman-cum-Managing Director, National Textiles Corporation Ltd. & Ors. v. N.T.C. (WBAB) & O) Ltd. Employees Union & Ors.	Service	14.10.2003
548.	C.A.Nos.8601-8605/97 State of A.P. v. P.V.Hanumantha Rao (D) thr. Lrs. & Anr.	Civil	14.10.2003
549.	Crl.A.No.49/2003 Parasa Raja Manikyala Rao & Anr. v. State of A.P.	Criminal	15.10.2003

550.	Crl.A.No.263/2003 Sunil Kumar v. The State Govt of NCT of Delhi	Criminal	15.10.2003
551.	C.A.No.7418/93 Dalip Singh & Ors. v. Sikh Gurdwara Prabhandak Committee & Ors.	Civil	15.10.2003
552.	Crl.A.No.1286/2002 Kamaljit Singh v. State of Punjab	Criminal	16.10.2003
553.	Crl.A.No.1265/2002 Bhupinder Sharma v. State of H.P.	Criminal	16.10.2003
554.	C.A.No.8585/2002 Sushil Kumar v. Rakesh Kumar	Election	16.10.2003
555.	C.A.No.4402/2002 Bidesh Singh v. Madhu Singh & Ors	Election	23.9.2003
556.	C.A.No.4673/97 State of U.P. & Ors. v. Jagjeet Singh & Ors.	Civil	16.10.2003
557.	C.A.No.8297/97 Bombay Stock Exchange v. Jaya I.Shah & Anr.	Civil	17.10.2003
558.	C.A.No.4449/97 Superintending Engineer & Ors. v. A.Sankariah	Service	17.10.2003
559.	C.A.Nos.8360-61/2003 BSES Ltd. v. M/s. Tata Power Co. Ltd. & Ors.	Civil	17.10.2003
560.	C.A.No.5416-24/2000 State of U.P. & Ors. v. Vam Organic Chemicals Ltd & Ors.		

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<u>S.NO.</u>	<u>CAUSE TITLE</u>	<u>SUBJECT</u>	<u>DATE</u>
561.	Crl.A.No.298/2003 Tulshidas Kanolkar v. The State of Goa	Criminal	27.10.2003
562.	C.A.No.8424/2003 The Municipal Corpn of Greater Bombay v. Sh. Laxman Iyer & Anr.	Civil	27.10.2003
563.	C.A.No.8375/97 U.O.I. & Anr. v. V.N.Bhat	Service	16.10.2003
564.	C.A.Nos.7940-42/2001 M.Anasuya Devi & Anr. v. M.Manik Reddy & Ors.	Civil	16.10.2003
565.	C.A.No.2533/98 State of Nagaland & Anr. v. Toulvi Kibami & Anr.	Civil	16.10.2003
566.	Crl. A.No.1262/2002 Jai Karan & Ors. v. State of U.P.	Criminal	28.10.2003
567.	C.A.No.8452/2003 Sarva Shramik Sangh v. M/s. Indian Smelting & Refining Co. Ltd. & Ors.	Service	28.10.2003
568.	Crl.A.No. 631/2003 Ratansinh Dalsukhbhai Nayak v. State of Gujarat	Criminal	29.10.2003
569.	Crl.A.No. 243/2003 Prem Sagar v. Dharambir & Ors.	Criminal	29.10.2003
570.	C.A.Nos. 8479-80/2003 State of Punjab v. Darshan Singh	Service	29.10.2003

571.	C.A.No.414/2000 The State of Goa & Anr. v. M/s. Colfax Laboratories Ltd. & Anr.	Tax	29.10.2003
572.	C.A.No.439/97 The Apex Co-operative Bank of Urban Bank of Maharashtra & Goa Ltd. v. The Maharashtra State Co-operative Bank Ltd. & Ors.	Civil	29.10.2003
573.	C.A.Nos.1444-45/00 <del>Prabhu Nath Jha &amp; Ors.</del> v. M.Ananchu Asari & Ors.	Civil	29.10.2003
574.	C.A.Nos.2168-69/2001 U.O.I. v. Ahmedabad Electricity Co. Ltd. and Ors.	Tax	29.10.2003
575.	C.A.No.5841/2002 Harikrishna Lal v. Babu Lal Marandi	Election	30.10.2003
576.	Crl.A.No.642/96 Kishorebhai Khamanchand Goyal v. State of Gujarat & Anr.	Criminal	30.10.2003
577.	C.A.Nos.1833-34/2003 Regu Mahesh @ Regu Maheswar Rao v. Rejendra Pratap Bhanj Dev & Anr.	Election	30.10.2003
578.	SI.P(C) No. 18035/2000 With I.A.No.2/2002 Dr. Mrs. Renuka Datla v. Solvay Pharmaceutical B.V. & Ors.	Civil	30.10.2003
579.	Crl.A.Nos. 119-21/97 Ramanand Yadav v. Prabhu Nath Jha & Ors.	Criminal	31.10.2003
580.	Crl.A.Nos. 532-34/2003 Babu Lal & Ors. v. State of M P	Criminal	31.10.2003

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<u>S NO</u>	<u>CAUSE TITLE</u>	<u>SUBJECT</u>	<u>DATE</u>
581.	C.A.No.8537/2003 Pondicherry Khadi & Village Industries Board v. P.Kulothangan & Am.	Service	31.10.2003
582.	C.A.Nos.4618-30/97 State of Bihar & Ors. v. Industrial Corpn Pvt. Ltd. & Ors.		4.9.2003
583.	Crl.A.No.992/2002 Ram Udgar Singh v. State of Bihar	Criminal	3.11.2003
584.	C.A.Nos.4698-4700/94, State of U.P. & Ors. v. Lalji Tandon (Dead) Through Lrs.	Civil	3.11.2003
585.	C.A.No.315/98 Narbada Devi Gupta v. Birendra Kumar Jaiswal & Am.	Civil	3.11.2003
586.	C.A.No.10906/96 Shanti Kumar Panda v. Shakuntala Devi	Civil	3.11.2003
587.	Crl.A.No.713/2003 Banti @ Guddu v. State of M.P.	Criminal	4.11.2003
588.	Crl.A.No.744/2003 Chander Pal @ Raj Pal v. State of Haryana	Criminal	16.10.2003
589.	C.A.Nos. 8132-33/2001 United Bank of India v. Ramdas mahadeo Prashad & Ors.	Civil	4.11.2003

590.	Crl.A.No.449/94 Preetam Singh & Ors. v. State of Rajasthan	Criminal	4.11.2003
591.	C.A.No.6974/96 Kashi Nath (D) through Lrs. v. Jagannath	Civil	5.11.2003
592.	W.P.(C) No.29/2003 Saurabh Chaudri & Ors. v. UOI & Ors	Education	4.11.2003
593.	C.A.No.8565/2003 U.O.I. & Ors. v. Jaipal Singh	Service	3.11.2003
594.	Crl.A.Nos. 430-32/2002 Simon & Ors. v. State of Karnataka	Criminal	16.10.2003
595.	C.A.No.8609/2003 U.P.Public Services Commission v. Subhash Chandra Dixit & Ors.	Service	5.11.2003
596.	Crl.A.No.1787/96 State of U.P. v. Ram Bahadur Singh & Ors.	Criminal	29.10.2003
597.	C.A.No.5909/202 U.O.I. v. Madhusudan Prasad	Service	28.10.2003
598.	C.A.Nos.6429-31/95 Sri Ramnik Vallabhdas Madhuvani & Ors. v. Taraben Pravinlal Madhvani	Civil	5.11.2003
599.	Crl.A.No.176/97 Suchand Pal v. Phani Pal & Anr.	Criminal	6.11.2003
600.	C.A.Nos.854-55/98 Bibi Zubaida Khatoon v. Nabi Hassan Saheb & Anr.	Civil	0.11.2003

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S.NO.	CAUSE TITLE	SUBJECT	DATE
601.	C.A.Nos.12746-47/96 S.Samuel, M.D., Harrison Malayalam & Anr. v. U.O.I. & Ors.	Civil	6.11.2003
602.	C.A.No.4/2003 Mercurykutty Amma v. Kadavoor Sivadasan & Anr.	Civil	6.11.2003
603.	C.A.No.3166/2002 Ram Singh and Ors. v. Union Territory, Chandigarh & Ors.	Service	7.11.2003
604.	Crd.A.No.190/2002 Gyasuddin Khan @ Md. Gyasuddin Khan The State of Bihar	Criminal	7.11.2003
605.	C.A.Nos.8663-64/2003 Indra Bhanu Gaur v. Committee, Management of M.M.Degree College & Ors.	Service	6.11.2003
606.	C.A.No.8665/2003 Dr.R.N.Rajanna v. State of Karnataka & Anr.	Service	7.11.2003
607.	C.A.Nos.4542-44/98 State Bank of India v. M/s.Ram Das & Anr.	Civil	29.10.2003
608.	C.A.Nos.3756-57/98 Oriental Insurance Co. Ltd. v. T.S.Sastry	Service	30.10.2003
609.	C.A.Nos.4086-87/98 Apangshu Mohan Lodh & Ors. v. State of Tripura & Ors.	Service	30.10.2003

610.	Crl.A.No.183/97 Chaudhari Ramjibhai Narasangbhai v. State of Gujarat and Ors.	Criminal	10.11.2003
611.	C.A.No.2419/2001 Bokajan Cement Corporation Employees' Union v. Cement Corpn. of India Ltd.	Service	10.11.2003
612.	C.A.Nos. 2609-2616/2002 Govt. of A.P. & Anr. v. Medwin Educational Society & Ors.	Civil	11.11.2003
613.	Crl.A.No.204/97 L.Chandraiah v. State of A.P. & Anr.	Criminal	6.11.2003
614.	C.A.No. 2072/96 M/s. Natural Health Products (P) Ltd. v. Collector of Central Excise, Hyderabad	Tax	11.11.2003
615.	SLP(C) No. 22316/97 OTIS Elevator Employee Union S.Reg. & Ors. v. U.O.I. & Ors.	Service	11.11.2003
616.	C.A.No.8957/2003 New India Assurance Co. Ltd. v. A.K.Saxena	Civil	7.11.2003
617.	C.A.No.4100/98 P.N.Premachandran v. The State of Kerala & Ors.	Service	6.11.2003
618.	C.A.No.10664/96 State of Orissa & Ors. v. Mangalam Timber Products Ltd.	Civil	11.11.2003
619.	Crl.A.No.208/97 State of A.P. v. V.Vasudeva Rao	Criminal	13.11.2003

620. Transfer Case (C) No. 38/2002  
Jasbir Kaur & Ors. v.  
U.O.I. & Ors.

Civil

13.11.2003

**CORRIGENDUM:**

**REPORTABLE NO.**

120.	W.P.(C) No.242/97 John Vallamattom & Anr. v. U.O.I.	328/2003	21.7.2003
121.	C.A.Nos.4698-4700/94 State of U.P. & Ors. v. Lajjit Tandon (D).	584/2003	3.11.2003
122.	C.A.Nos. 5282/2002 South Eastern Coalfields Ltd. etc. v. State of M.P. & Ors.	543/2003	13.10.2003
123.	C.A.Nos.8479-80/2003 State of Punjab v. Darshan Singh	570/2003	29.10.2003
124.	C.A.No.6974/96 Kashi Nath (D) through Lrs. v. Jaganath	591/2003	5.11.2003
125.	C.A.No.414/2000 The State of Goa & Anr. v. M/s. Colfax Laboratories Ltd. & Anr.	571/2003	29.10.2003
126.	C.A.No.5933/2000 Sharda v. Dharmpal	192/2003	28.3.2003
127.	C.A.No.4703/99 Commissioner of Wealth Tax, Hydrabad v. Trustees of HEH	237/03	16.4.2003





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S.NO.	CAUSE TITLE	SUBJECT	DATE
621.	Crl.A.No.278/97 Vidyadharan v. State of Kerala	Criminal	14.11.2003
622.	C.A.Nos. 2553-54/2002 Ahmednagar Zilla S.D.V. & P.Sangh Ltd. & Anr. v. State of Maharashtra & Ors.	Civil	5.11.2003
623.	C.A.Nos. 2902-2903/2002 M/s. B.L. Gupta Construction (P) Ltd. v. Bharat Cooperative Group Housing Society Ltd.	Civil	5.11.2003
624.	C.A.No.2758/2002 Malikarjun v. Gulbarga University	Civil	5.11.2003
625.	C.A.Nos.4559-4562/98 State of Karnataka & Ors. v. P.M.Baskara Gowda & Ors.	Civil	6.11.2003
626.	Crl.A.Nos. 530-531/2003 Bhargavan & Ors. v. State of Kerala	Criminal	17.11.2003
627.	Crl.A.No.1783/96 State of Punjab v. Joginder Singh and Anr.	Criminal	29.10.2003
628.	C.A.Nos.4075-4081/98 Nair Service Society v. Dist. Officer, Kerala Public Service Commission & Ors.	Civil	17.11.2003

629.	C.A.Nos. 3630-3631/2003 Prohibition & Excise Supd. A.P. & Ors. v. Toddy Tappers Coop. Society, Marredpally & Ors.	Civil	17.11.2003
630.	C.A.No.5383/98 Dharam Chand & Ors. v. Haryana Agricultural University & Ors.	Service	12.11.2003
631.	C.A.No.5579/98 State of Orissa and Ors. v. Joginder Patjoshi & Anr.	Service	13.11.2003
632.	C.A.No.7096/2000 Smt. Lila Ghosh (Dead) through Lr Shri Tapas Chandra Roy v. The State of West Bengal	Civil	18.11.2003
633.	T.P.(Crl.) Nos. 77-78/2003 K.Anbazhagan v. The Superintendent of Police & Ors. etc.	Civil	18.11.2003
634.	C.A.No.9130/2003 Anneer Trading Corpn. Ltd. v. Shapoorji Data Processing Ltd.	Civil	18.11.2003
635.	C.A.No.9131/2003 Fokha Mukherjee v. Ashish Kumar Das & Anr.	Civil	18.11.2003
636.	C.A.No.3527/98 Government of West Bengal v. Tarun K.Roy & Ors.	Service	18.11.2003
637.	C.A.No.292/97 State of M.P. v. Awadh Kishore Gupta & Ors.	Criminal	18.11.2003
638.	C.A.No.8232/96 Hindustan Lever & Anr. v. State of Maharashtra & Anr.	Civil	18.11.2003

639.	W.P.(C) No.134/99 The High Court Employees Welfare Association, Calcutta & Ors. v. State of W.B. & Ors.	Service	18.11.2003
640.	W.P.(Crl.) No. 199/2003 Ashok Kumar Pandey v. The State of West Bengal & Ors.	Criminal	18.11.2003
CORRIGENDUM:			
128.	C.A.No. 5982/2001 J.P.Bansal v. State of Rajasthan & Anr.	164/2003	12.3.2003
129.	C.A.No.10585/96 R.V.E.Venkatachala Gounder v. Arulmigu Viswesaraswami & V.P. Temple & Anr.	533/2003	8.10.2003
130.	C.A.No.2321/2003 Mysore Cements Ltd. v. Svein's Barmac Ltd.	170/2003	12.4.2003
131.	C.A.No.7133/2003 Krishna Mohan Kul v. Pratima Maity	461/2003	
132.	Crl.A.No.248/2003 The Govt. of N.C.T. of Delhi v. Jaspal Singh	380/2003	8.8.2003



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S.NO.	CAUSE, TITLE	SUBJECT	DATE
641.	C.A.No.4269/2002 Dulal Poddar v. Executive Engineer, Dona Canal Division & Ors.	Civil	12.11.2003
642.	C.A.No.4717/98 Indira Vij v. State of Haryana & Ors.	Service	18.11.2003
643.	C.A.No.7868/95 M/s Signode India Ltd. v. Collector of Central Excise	Tax	19.11.2003
644.	C.A.No.857/98 Shyam Singh v. Daryao Singh (D) by Lrs. & Ors.	Civil	19.11.2003
645.	C.A.Nos. 9136-37/2003 M/s. Sathyanarayana Brothers (P) Ltd. v. Tamil Nadu Water Supply & Drainage Board	Civil	18.11.2003
646.	C.A.Nos.8274-92/2001 Harinagar Sugar Mills Ltd. v. State of Bihar & Ors.	Civil	19.11.2003
647.	Crl.A.Nos.519-521/2003 Geetha Venkata Reddy v. State of A.P.	Criminal	19.11.2003
648.	C.A.No.4861/98 State of Haryana & Ors. v. Sumitra Devi & Ors.	Service	6.11.2003
649.	Crl.A.No.1968/96 Goa Plast (P) Ltd. v. Chico Ursula D'Souza	Criminal	20.11.2003

650. C.A.No.3130/2002 Ashan Devi & Anr. v. Phulwasi Devi & Ors.	Civil	19.11.2003
651. C.A.No:3665/2002 Liverpool & London S.P. & I.Assoon Ltd. v. M.V.Sea Success I and Anr.	Civil	20.11.2003
652. C.A.Nos. 62-65/99 Pranod K.Pankaj v. State of Bihar & Ors.	Service	20.11.2003
653. C.A.No.3017/97 State of Punjab & Anr. v. M/s. Devans Modern Breweries Ltd. & Anr.	Civil	20.11.2003
654. C.A.No.33/2003 M.Chinnasamy v. K.C.Palanisamy & Ors.	Civil/Election	21.11.2003
655. C.A.No.11483/96 Amrendra Pratap Singh v. Tej Bahadur Prajapati & Ors.	Civil	21.11.2003
656. C.A.No.9205-9207/2003 The Land Acquisition Officer, Kannurapally Village, Nizamabad District, A.P. v. Nookala Rajamallu & Ors.	Civil	21.11.2003
657. C.A.Nos. 5337-39/99 Manager, Nirmala Senior Secondary School, Port Blair v. N.I.Khan & Ors.	Service	21.11.2003
658. C.A.No.2712/99 State of Jammu & Kashmir v. Ghulam Mohd. Dar & Anr.	Civil	20.11.2003
659. C.A.No.225/99 State of Kerala & Ors. v. M.Chinnasiappan	Civil	20.11.2003
660. C.A.No.5984/98 Ninetrabasi Diswal v. Ajaya Kumar Baral & Ors.	Service	20.11.2003

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661.	C.A.Nos. 115-120 & 121-127/2002 R.Sai Bharathi v. J.Jayalalitha & Ors.	Criminal	24.11.2003
662.	Crl.A.No.331/97 Shriram v. State of M.P.	Criminal	24.11.2003
663.	C.A.No.7571/2002 N.D.Thandani (D) by Lrs. v. Amavaz Rustom Printer & Anr.	Civil	24.11.2003
664.	W.P.(C) No.276/2001 Dharam Dutt & Ors. v. U.O.I. & Ors.	Civil/Election	24.11.2003
665.	Crl.A.Nos. 104-106/2003 Bikau Pandey & Ors. v. State of Bihar	Criminal	25.11.2003
666.	C.A.No.13711/96 Bhagar Ram & Anr. v. Suresh & Ors.	Civil	25.11.2003
667.	C.A.No.7433/97 K.Sivaramanujah v. Rukmani Ammal	Civil	20.11.2003
668.	C.A.No.4051/96 M/s. Pepsi Foods Ltd. v. Collector of Central Excise, Chandigarh	Tax	25.11.2003
669.	C.A.No.5377/98 U.O.I. & Anr. v. M/s. Sehan Lal Pughia	Civil	19.11.2003
670.	Crl.A.Nos. 371-372/2003 Ram Dular Rai & Ors. v. State of Bihar	Criminal	27.11.2003

671.	Crl.A.No.506/97 State of Karnataka v. Putaraja	Criminal	27.11.2003
672.	C.A.No.5186/2001 Sudhakar Vithal Kumbhare v. State of Maharashtra & Ors.	Service	18.11.2003
673.	C.A.No.4684/2001 Chandigarh Administration & Anr. v. Surinder Kumar & Ors.	Service	27.11.2003
674.	C.A.No.14136/96 Hindalco Industries Ltd. v. U.O.I. & Ors.	Civil	27.11.2003
675.	C.A.Nos.14178-14184/96 Daji Tebari Sahai (D) through Lrs. etc. v. State of U.P.	Civil	28.11.2003
676.	Crl.A.No.20/2003 Suresh Paswan v. State of Jharkhand	Criminal	28.11.2003
677.	C.A.No.5618/2000 M.F.A.I.T. Permit Owners Assn. & Anr. v. State of M.P.	Civil	28.11.2003
678.	C.A.No.6301/2001 Krishi Upadan Mandi Samiti & Ors. v. Pillibhit Pantnagar Beej Ltd. & Anr.	Civil	28.11.2003
679.	C.A.Nos.913-914/98 Maharashtra Development Authority v. Smt.Sheela Devi & Ors. etc.	Civil	28.11.2003
680.	C.A.No.4914/97 Officer of Central Excise, Ahmedabad v. Orient Textiles Pvt. Ltd.	Tax	25.11.2003

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<u>S.NO.</u>	<u>CAUSE TITLE</u>	<u>SUBJECT</u>	<u>DATE</u>
681.	C.A.Nos. 6877-81/2000 Secunderabad Cantonment Board, Andhra Circle, Secunderabad rep. by Executive Officer v. Mohammed Mohiuddin & Ors.	Civil	28.11.2003
682.	Crl.A.No.390/97 Parkash v. State of Haryana	Criminal	2.12.2003
683.	Crl.A.No.634/2003 Prabha Shankar Dubey v. State of M.P.	Criminal	2.12.2003
684.	C.A.No.4617/96 M/s Sun Beverages (P) Ltd. v. The State of U.P. & Ors.	Civil	28.11.2003
685.	C.A.No.7149/97 Babu Parasu Kakadi (D) by Lrs. v. Babu (D) through Lrs.	Civil	29.10.2003
686.	Crl.A. No.103/2003 Sahou Jabbi v. State of Maharashtra	Criminal	3.12.2003
687.	C.A.No.9547/2003 Reserve Bank of India & Anr. v. Cecil Dennis Solomon & Anr.	Service	4.12.2003
688.	Crl.A.No.410/97 State (Union of India) v. Ram Saran	Criminal	4.12.2003
689.	Crl.A.Nos. 551-52/97 Govt. of A.P. & Ors. v. M.T.Khan	Criminal	5.12.2003

690.	CH.A.No.1468/2003 U.O.I. v. Kuldeep Singh	Criminal	8.12.2003
691.	C.A.Nos.7097-98/98 Ahmedabad Education Society v. Gliber B.Shah & Ors.	Service	8.12.2003
692.	C.A.No.9614/2003 Chattannan Harentha Gowda v. M.R.Thirumala & Ann.	Civil	8.12.2003
693.	CH.A.No.339/97 State of H.P. v. M.P.Gupta	Criminal	9.12.2003
694.	CH.A.No.304/97 State of Orissa v. Kanduri Sahoo	Criminal	4.12.2003
695.	C.A.No.9631/2003 Smt.Anoelha v. The State of Rajasthan & Ors.	Civil	8.12.2003
696.	C.A.No.1938/2002 M.P.'Cement Manufacturers' Association v. State of M.P. & Ors.	Civil	9.12.2003
697.	CH.A.No.655/97 Hare Ram Pandey v. State of Bihar & Ors.	Criminal	10.12.2003
698.	C.A.Nos.4156-57/2002 Maharashtra Etra Havers Union & Ann. v. Municipal Corpn., Greater Mumbai & Ors.	Civil	9.12.2003
699.	C.A.No.16737/96 R.Kuppavee & Ann. v. Raja Gowder	Civil	10.12.2003

700.	C.A.No.92/98 The Secretary, Thirumurugan Co-operative Agricultural Credit Society v. M.Lalitha (Dead) through Lrs. & Ors.	Civil	11.12.2003
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CORRIGENDUM:

REPORTABLE NO.

133.	C.A.No.5232/2002 South Eastern Coalfields Ltd. etc. v. State of M.P. & Ors	543/2003	13.10.2003
134.	C.A.No.8374-7/2001 High Court of Gujarat & Anr. v. Gujarat Kishan Mazdoor Panchayat & Ors.	157/2003	10.3.2003



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<u>S.NO.</u>	<u>CAUSE TITLE</u>	<u>SUBJECT</u>	<u>DATE</u>
701.	C.A.No.9726/2003 Uma Devi Nambiar & Ors. v. T.C.Sidhan (D)	Civil	11.12.2003
702.	W.P.(C) No. 42/2001 N.C.Dhoundial v. U.O.I. & Ors.	Civil	11.12.2003
703.	I.A.Nos.24,25,28 & 29 In W.P.(C) No.725/94 In Re: News item Published in Hindustan Times Titled "And Quit Flow Maily Yandina"	Civil (Permits Construction of Additional floor)	12.12.2003
704.	Crl.A.No.947/2003 Sushil Murmu v. State of Jharkhand	Criminal	12.12.2003
705.	C.A.Nos.1907-08/2000 Mohammed Haroon Ansari & Anr. v. The District Collector. Ranga Reddy District, A.P.	Civil	12.12.2003
706.	Crl.A.Nos.473-74/2003 Arun Paswan, S.I. v. State of Bihar & Ors.	Criminal	12.12.2003
707.	C.A.No.9734/2003 Parina Lal Ghosh & Ors. v. Land Acquisition Collector & Ors.	Civil	12.12.2003
708.	C.A.No.4468/99 Rajasthan High Court, Jodhpur through Registrar v. Babu Lal Arora	Service	12.12.2003
709.	C.A.No.1574/2000 Group General Manager (Projects), O.N.G.C. v. A.M. Saiyed	Service	12.12.2003
710.	C.A.No.3957/98 Basic Shiksha Parishad & Anr. v. Smt.Sugna Devi & Ors.	Service	12.12.2003

711.	C.P.No.180/2001 In C.A.No.4138/99 Bank of Baroda v. Sadrudin Hasan Daya & Anr.	Civil	12.12.2003
712.	C.A.No.4090/2003 Ajay Kumar Poeria v. Shyam & Ors.	Election	11.12.2003
713.	C.A.No.6253/98 State of Tripura & Ors. v. K.K.Roy	Service	12.12.2003
714.	C.A.No.1781/2000 D.D.A. & Ors. v. Jaginder S.Monga & Ors.	Civil	12.12.2003
715.	Crl.A.Nos.232-34/97 Gone S.Naidu v. State of A.P. & Ors.	Criminal	15.12.2003
716.	Crl.A.No.1296/2002 Ashfaq v. State (Govt. of NCT of Delhi)	Criminal	10.12.2003
717.	C.A.No.13133/96 Krishna Pillai Rajasekharan Nair (D) by Lrs. v. Padmanabha Pillai (D) by Lrs. & Ors.	Civil	15.12.2003
718.	C.A.No.7662/97 Rame Gowda (D) by Lrs. v. M.Varadappa Naidu (D) by Lrs. & Anr.	Civil	15.12.2003
719.	W.P.(C)No.389/2002 People's Union for Civil Liberties & Anr. v. U.O.I.	Civil (POTA)	16.12.2003
720.	Crl.A.No.778/97 State of Punjab v. Bhag Singh	Criminal	16.12.2003

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<u>S.NO.</u>	<u>CAUSE TITLE</u>	<u>SUBJECT</u>	<u>DATE</u>
721.	Crl.A.No.887/97 James Martin v. State of Kerala	Criminal	16.12.2003
722.	C.A.No.:7653/99 Smt. V.Rajeshwari v. T.C.Saravanabava	Civil	16.12.2003
723.	C.A.Nos.717-19/99 Sureshchandra Singh & Ors. v. Fertilizer Corpn. of India Ltd. & Ors.	Service	16.12.2003
724.	C.A.Nos.4671-73/99 S.Devasahayam & Anr. v. Joint Director & Anr.	Service	16.12.2003
725.	C.A.No.3617/2000 Baleshwar Paswan & Ors. v. State of Bihar & Ors.	Service	16.12.2003
726.	C.A.No.2636/99 Vithal V.Gaitonde v. U.O.I. & Anr.	Service	16.12.2003
727.	C.A.No.5003/2002 Bajaj Auto Ltd. v. Bhojane Gopinath D. & Ors.	Service	17.12.2003
728.	Crl.A.No.633/2003 Rajendra & Anr. v. State of Madhya Pradesh	Criminal	17.12.2003
729.	Crl.A.No.547/97 State of Punjab v. Ramdev Singh	Criminal	17.12.2003

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730.	C.A.No.9937/2003 U.O.I. v. Savjiram & Anr.	Civil	17.12.2003
731.	C.A.Nos.5593-94/2002 ML Yacob Sheriff (D) by Lrs. v. Rajrani Devi	Civil	17.12.2003
732.	C.A.No.32/99 Bahadursinh Lakshubhai Gohil v. Jagdishbhai M.Kamalia & Ors.	Civil	17.12.2003
733.	C.A.No.10091/2003 Haryana State Cooperative Land Development Bank Ltd. v. Haryana State Cooperative Land Development Banks Employees Union & Anr.	Service	18.12.2003
734.	Crl.A.No.897/97 State of A.P. v. K.Srinivasulu Reddy & Anr.	Criminal	18.12.2003
735.	Crl.A.No.827/97 Shamsuddin & Ors. v. State of M.P.	Criminal	18.12.2003
736.	C.A.No.4459/97 Ram Swaroop & Anr. v. Mahindru & Ors.	Civil	18.12.2003
737.	C.A.No.7127/99 U.O.I. & Ors. v. C.Krishna Reddy	Tax	18.12.2003
738.	C.A.No.1036/2000 K.Balakrishnan v. K.Kamalam & Ors.	Civil	18.12.2003
739.	C.A.No.5188/2001 Ganga Retreat & Towers Ltd. & Anr. v. State of Rajasthan & Ors.	Civil	19.12.2003



740.	C.A.No.2063/2000 Radha Raman Samanta v. Bank of India & Ors.	Service	19.12.2003
741.	Crl.A.No.728/97 Chanakya Dhibar (Dead) v. State of West Bengal & Ors.	Criminal	19.12.2003
742.	C.A.No.10135/2003 Videocon Properties Ltd. v. Dr.Bhalchandra Laboratories & Ors.	Civil	19.12.2003
743.	C.A.No.8561/97 Howrah Municipal Corpn & Ors. v. Gangès Rope Co. Ltd. & Ors.	Civil	19.12.2003
744.	C.A.No.49/99 M's. Teri Oat Estates (P) Ltd. v. U.T.Chandigarh & Ors.	Civil	19.12.2003
745.	C.A.No.10207/2003 State of Manipur & Anr. v. R.K.Manikanta Singh & Ors.	Service	19.12.2003
746.	C.A.No.4385/2001 F.M.Devaru Ganapati Bhat v. Prabhakar Ganapathi Bhat	Civil	19.12.2003
47.	C.A.No.10250/2003 Board of Secondary Education of Assam v. Md.Sarifuz Zaman & Ors.	Education	19.12.2003



REPORTABLE -35/2003

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

WRIT PETITION(CIVIL) NO,407/2001  
(Under Article 32 of the Constitution of India)

Ms.Neelu Arora and Anr.

...Appellant

v.

Union of India & Ors.

..Respondent

THE 24TH DAY OF JANUARY,2003

Present:

Hon'ble Mr.Justice S.Rajendra Babu  
Hon'ble Mr.Justice K.G.Balakrishnan  
Hon'ble Mr.Justice P.Venkatarama Reddi

P.P.Malhotra, Sr. Adv., P.H.Parekh, R.Jawahar Lal. Ms.Shakun Sharma. Vinod Shukla, Adv.for M.C.Dhingra, Altaf Ahmed, ASG, Ms.Sunita Sharma. D.S.Mahra, Rudreshwar Singh, Prakash Srivastava. Tara Chand Sharma. Ajay Sharma, Ms.Neelam Sharma, Mrs.Revathy Raghavan, Ms. Krishna Sarma, Ms.Asha G.Nair, V.K.Sidatharan, J.R.Juwang, Ashok Srivastava, J.P.Dhanda, B.B.Singh, Kumar Rajesh Singh. Kh.Nobin Singh, A.Mariarputham, Ms.Aruna Mathur., Anurag D.Mathur, Anurag D.Mathur, Ramesh Babu M.R., K.L.Janjani, R.C.Verma, Mukesh Verma, Pankay Kumar Singh, Bhavanishakar v. Gadnis, Ms. Smita Inna. Ms.Divya Suri. H.A.Raichura, Navin Prakash, Rahul Singh, Anil Srivastava. Anil Suhrawardy, B.S.Banthia, Ms.Anu Sawhney, Ms. Hemantika Wahi, V.G.Pragasam, Sanjay R.Hegde, Javed Mahmud Rao, Ms. Rachna Srivastava, Naresh K.Sharma, C.V.Subba Rao, Rajeev Sharma, Ms.Kamini Jaiswal, Guntur Prabhakar, Sushil Kumar Jain, (NP), Radha Shyam Jena, Advs. for the appearing parties.

J U D G M E N T

The following Judgment of the Court was delivered



**IN THE SUPREME COURT OF INDIA**  
**CIVIL ORIGINAL JURISDICTION**  
**WRIT PETITION (CIVIL) NO. 437 OF 2001**

Ms. Neelu Arora & Anr.

..... Petitioners

*versus*

Union of India & Ors.

..... Respondents

[With I.A. NO. 14 (I) W.P.(C) No.413/1992]

**JUDGMENT**

**RAJENDRA BABU, J. :**

These petitions are offshoot of a Scheme framed by this Court in Sharywan Kumar, etc.etc. vs. Director General of Health Services & Anr. etc.etc., 1993 (3) SCC 382, prescribing the procedure to complete the process of allotment of 15 per cent of All-India quota for admission to MBBS/BDS courses in various colleges in the country by September each year. The said Scheme was modified pursuant to an order made in I.A.No 10 of 2000 in WP{C} No.443 of 1992 the dates fixed stand altered, as indicated therein, but we are not concerned with the same in these proceedings. The last date for receipt of vacancy position is fixed as September of each year and the IInd round of counselling is proposed to be taken during the period fixed therein.

Now in these petitions, it is contended that the IInd round of counselling for the All-India quota seats which was scheduled to be held have neither been held as the Pre-Medical Test [PMT] is not conducted nor counselling for the seats under the State quota is completed.

This Court in Dr. Pradeep Jain & Ors. etc. etc. vs. Union of India & Ors., etc. etc., 1984 (3) SCC 654 and Dr. Dinesh Kumar & Ors. vs. Motilal Nehru Medical College & Ors., 1986 (3) SCC 727, while disapproving of the total reservation on different scores in regard to admission of students in medical courses such as MBBS and post-graduate specialties, stated that "the very mandate of the equality clause viewed in the perspective of social justice would justify some extent of reservation preferences for students passing the qualifying examination". The primary consideration in formulating the scheme for creating a reservation in favour of candidates is broadly based on national approach as against the State based reservation. This background resulted in the formulation of the Scheme, which is sought to be interpreted or modified now. We should not read the Schemes framed by this Court as if they are Statutes or that inexorable rights are conferred upon the parties. For the academic year 2001-2002, 1483 seats for MBBS course and 146 seats for BDS course, totaling 1629 seats were made available by the States under the 15% All-India Quota. On the basis of the results declared by respondent No.2, 2759 successful candidates were sent call letters. By the end of the first round of counselling, 86 seats remained un-filled to be allotted in the second round. Some States or colleges informed their vacancy

position under 15% All-India Quota from first round of allotment amounting to 245 seats. However, some States have not intimated vacancy position even as late as 5.9.2001.

It is submitted that the candidates from these States who have been allotted seats in the first round of allotment may not have been given the course or college or place of their choice and in case later on they get the allotment of their choice under the State quota, then they will vacate the seats allotted to them under the All-India Quota. Hence they apprehend that more than 700 seats will fall vacant once the counselling is conducted in the aforesaid States. Therefore, it is submitted that a third round of counselling is required to be held and that the vacant seats, if any, should arise in the 15 per cent All-India Quota seats should not be allowed to revert back to the States/Colleges after September 2001 and that instead successful and meritorious candidates in the All-India Quota should be allotted these seats or such other orders as necessary may be passed.

As per clause 14 of the Scheme if the Dean or the Principal of the concerned college does not fill the vacancy position due to non-joining of candidate or candidates in the first round of counselling before the date indicated therein, the seats allotted to them shall be treated as vacant and allotment of candidates will be made against these deemed vacant seats and it shall be the responsibility of the Dean or the Principal of the concerned college to give admission to those candidates in the third round of allotment by personal

appearance will be for candidates who were allotted a seat in the first round and who wish to change their allotted college/course and wish to join the same against vacancies arising due to non-joining of the candidates allotted in the first round of personal appearance and for candidates on the merit list who could not be considered for allotment in the first round. It is thus the 11nd round of counselling by personal appearance was to be concluded by a particular date

When a detailed scheme has been framed through orders of this Court and the manner in which it has to be worked out is also indicated therein, we do not think that if in a particular year there is any short fall or certain number of seats are not filled up, the same should be done by adopting one more round of counselling because there is no scope for the third round of counselling under the Scheme. It would not be advisable to go on altering the scheme as and when seats are found vacant. What is to be borne in mind is that broad equality will have to be achieved and not that it should result in any mathematical exactitude. Out of about 1600 seats, if 250 seats are not filled up for various reasons, we do not think it should result in the third round of counselling. If that process is to be adopted then there will be again vacancies and further filling up of the seats falling vacant will have to be undertaken. In that process, it will become endless until all the seats under the All-India Quota are filled up. That is not the object of the Scheme formulated by this Court. The object was to achieve a broad based equality as indicated by us at the outset and we do not think that any steps have to be taken for altering the Scheme. Moreover, this Court in **Medical Council of India vs. Madhu Singh & Ors.**, 2002 (7) SCC 258,



has taken the view that there is no scope for admitting students midstream as that would be against the very spirit of statutes governing medical education. Even if seats are unfilled that cannot be a ground for making mid-session admissions and there cannot be telescoping of unfilled seats of one year with permitted seats of the subsequent year. If these aspects are borne in mind we do not think any reliefs as sought for by the petitioners can be granted under these petitions.

Interlocutory Applications filed shall stand disposed of in view of the order made by us in the main petitions.

These petitions shall stand dismissed.

.....J.  
[ S. RAJENDRA BABU ]

.....J.  
[ K.G. BALAKRISHNAN ]

.....J.  
[ P. VENKATARAMA REDDI ]



IN THE SUPREME COURT OF INDIA  
CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO.393/2002  
(Under Article 32 of the Constitution of India)

Supreet Batra & Ors.

..Petitioners

vs.

Union of India & Ors.  
with W.P.(C)No.473/2002

..Respondents

THE 27TH DAY OF JANUARY, 2003

Present:

Hon'ble Mr. Justice S.Rajendra Babu  
Hon'ble Mr. Justice D.M.Dharmadhikari  
Hon'ble Mr. Justice G.P.Mathur

K.N.Rawal, Solicitor General, A.I.M Ranga Ramanujam, Kailash Vasdev, Sr. Advs, P.H.Parekh, Rohit Alex, Mrs.Gouri K.Das, Ms.Rani Jethmalani, Mrs.Sunita Sharma, D.S.Mahra, Sumita Sharma, R.K.Rathore, Addl. Adv. Gen. for Punjab, Tara Chandra Sharma, Ms.Neelam Sharma, Ajay Sharma, Anil Nag, R.K.Bansal, K.R.Sasiprabhu, John Mathew, Ms.K.Sangeeta, Sushil Tekriwal, S.S.Shinde, V.N.Raghupathy, Pardeep Gupta, C.M.Kennedy, K.K.Mohan, Ranji Thomas, Mrs. Bharati Upadhyaya, D.K.Thakur, Sanjay Mitra, V.G.Pragasam, Maninder Singh, A.Mariarputtam, Ms.Prathiba M.Singh, Ms.Ankur Talwar, Kirtiman Singh, Angad Chopra, Bhavanishankar V.Gadnis, H.A.Raichura, Ms.Hemantika Wahi, Ms. Sadhna Sandhu, Prakash Shrivastava, P.K.Chabravarty, Annam D.N.Rao, Ms. Krishna Sarma, Ms.Asha G.Nair, V.K.Sidatharan, for M/s. Corporate Law Group, Ms.Kamini Jaiswal, Ms.Shomila Bakshi, Satinder Singh Gulati, Ranbir Yadav, Naresh K.Sharma, K.H.Nobin Singh, M.Gireesh Kumar, Ms.Revathy Raghavan, Ashok Srivasatava, B.S.Banthia, Ms.geetanjali Mohan, Advs. for the appearing parties.

JUDGMENT

The following Judgment of the Court was delivered



**IN THE SUPREME COURT OF INDIA**

**CIVIL ORIGINAL JURISDICTION**

**Writ Petition [Civil] No.393 of 2002**

**Supreet Batra & Ors.**

..... **Petitioners**

**versus**

**Union of India & Ors.**

..... **Respondents**

**[With W.P.(C) No.473/2002]**

**JUDGMENT**

**RAJENDRA BABU, J. :**

These petitions are offshoot of a Scheme framed by this Court in **Sharwan Kumar, etc.etc. vs. Director General of Health Services & Anr. etc.etc.**, 1993 (3) SCC 332, prescribing the procedure to complete the process of allotment of 15 per cent of All-India quota for admission to MBBS/BDS courses in various colleges in the country by September [now changed to 7<sup>th</sup> August] each year. The said Scheme was modified pursuant to an order made in I.A.No.10 of 2000 in WP(C) No.143 of 1992 and the date fixed, as stood altered, as indicated therein and the last date for receipt of vacancy position is fixed as 7<sup>th</sup> August of each year and the IInd round of counselling is proposed to be taken between the period from 18<sup>th</sup> July to 24<sup>th</sup> July of each year.

Now in these petitions, it is contended that selection or counselling has not been done in some States and therefore, they would not take full advantage of the second round of counselling. The details are set forth as under :

- a. The date of the PMT in Punjab has been altered from 23<sup>rd</sup> June to 21<sup>st</sup> July, 2002.
- b. The States of Haryana and Uttar Pradesh have only conducted their PMT on 30<sup>th</sup> June, 2002.
- c. In the state of Karnataka – the counselling sessions for the Karnataka quota will commence on the 31<sup>st</sup> of August and the counselling sessions for the non-Karnataka quota will commence on 11<sup>th</sup> September, 2002.
- d. In the State of Rajasthan, the results of the PMT were declared on 26<sup>th</sup> June, 2002. However, no counselling schedule has been declared so far.
- e. In the State of Bihar, the date of the PMT had been shifted from 9<sup>th</sup> June to 11<sup>th</sup> July, 2002.
- f. In the State of Jharkhand, the date of the pre-entrance test for screening has been fixed at 7<sup>th</sup> July, 2002 and no date has been fixed for the main entrance test i.e. the P.M.T.
- g. In the State of West Bengal, no date has been announced vis-à-vis the counselling sessions.
- h. In the state of New Delhi, the DPMT was conducted on 16<sup>th</sup> May, 2002 and the date of the counselling is scheduled to be held on 16<sup>th</sup> and 17<sup>th</sup> July, 2002.

In the States of Gujarat and Himachal Pradesh, they have not conducted the PMT yet.

Vis-à-vis All India All India Institute of Medical Sciences, the test was conducted on 1<sup>st</sup> June, 2002 and the counselling is scheduled to be held on 29<sup>th</sup> July, 2002.

It is submitted that the candidates from these States who have been allotted seats in the first round of allotment may not have been given the course or college or place of their choice and in case later on they get the allotment of their choice under the State quota, then they will vacate the seat allotted to them under the All-India Quota. Hence they apprehend that more than 700 seats will fall vacant once the counselling is conducted in the aforesaid States. Therefore, it is submitted that a third round of counselling is required to be held in the special ~~features~~ of the case and that the vacant seats, if any, should arise in the 15 per cent All-India Quota seats should not be allowed to revert back to the States/Colleges after 7<sup>th</sup> August, 2002 and that instead of successful and meritorious candidates in the All-India Quota should be allotted these seats and pass such other orders as may be necessary.

This Court in *Dr. Pradeep Jain & Ors., etc. etc. vs. Union of India & Ors., etc. etc.*, 1984 (3) SCC 654 and *Dr. Dinesh Kumar & Ors. vs. Motilal Nehru Medical College & Ors.*, 1986 [3] SCC 727, while disapproving of the total reservation on different scores in regard to admission of students in medical

courses such as MBBS and post-graduate specialties, stated that "the very mandate of the equality clause viewed in the perspective of social justice would justify some extent of reservation preferences for students passing the qualifying examination". The primary consideration in formulating the scheme for creating a reservation in favour of candidates is broadly based on national approach as against the State based reservation. This background resulted in the formulation of the Scheme, which is sought to be interpreted or modified now. We should not read the Schemes framed this Court as if they are Statutes or that inexorable rights are conferred upon the parties. For the academic year 2002-2003, 1484 seats for MBBS course and 150 seats for BDS course, totaling 1634 seats were made available by the States under the 15% All-India Quota. On the basis of the results declared by respondent No.2, 2778 successful candidates were sent call letters. By the end of the first round of counselling, the entire 1634 seats were allotted up to 1835<sup>th</sup> rank.

The contention of the petitioners is that inasmuch as certain circumstances have arisen in view of change of date in the matter of counselling and date by which intimation of the vacancy position to the Director General of Health Services, the scheme framed by this Court in Sharwan Kumar's case is not being given full effect with the consequence of seats reverting to States thus frustrating the Scheme framed by this Court.



As per clause 14 of the Scheme, if the Dean or the Principal of the concerned college does not notify the vacancy position due to non-joining of candidate or candidates in the first round of counselling before the date indicated therein, the seats allotted to the college will be treated as vacant and allotment of candidates will be made against these deemed vacant seats and it shall be the responsibility of the Dean or the Principal of the concerned college to give admission to those candidates. The 2nd round of allotment by personal appearance will be for candidates who were allotted a seat in the first round and who wish to change their allotted college/course and wish to join the same against vacancies arising due to non-joining of the candidates allotted in the first round of personal appearance and for candidates on the merit list who could not be considered for allotment in the first round. It is thus the 2nd round of counselling by personal appearance was to be concluded by a particular date.

When detailed scheme has been framed through orders of this Court and the manner in which it has to be worked out is also indicated therein, we do not think that if in a particular year there is any short fall or certain number of seats are not filled up, the same should be done by adopting one more round of counselling because there is no scope for the third round of counselling under the Scheme. It would not be advisable to go on altering the scheme as and when seats are vacant. What is to be borne in mind is that broad equality will have to be achieved and not that it should result in any mathematical exactitude. Out of about 1600 seats, if 200 seats are not filled up for various reasons and such not filled up seats were much less in the earlier years, we do not think it

should result in the third round of counselling. If that process is to be adopted then there will be again vacancies and further filling up of the seats falling vacant will have to be undertaken. In that process, it will become endless until all the seats under the All-India Quota are filled up. That is not the object of the Scheme formulated by this Court. The object was to achieve a broad based equality as indicated by us at the outset and we do not think that any steps have to be taken for altering the Scheme. We have taken identical view in the decision in Writ Petition (Civil) No. 407 of 2001 (Ms. Neeju Arora & Anr. vs. Union of India & Ors.) and connected matters disposed of on 24.01.2003. Moreover, this Court in Medical Council of India vs. Madhu Singh & Ors., 2002 (7) SCC 258, has taken the view that there is no scope for admitting students midstream as that would be against the very spirit of statutes governing medical education. Even if seats are unfilled that cannot be a ground for making mid-session admissions and there cannot be telescoping of unfilled seats of one year with permitted seats of the subsequent year. If these aspects are borne in mind we do not think any reliefs as sought for by the petitioners can be granted under these petitions. These writ petitions shall stand dismissed.

By an interim order this Court had directed that the seats in the All-India quota should not revert to the States. As a consequent these seats have not been filled up either in All-India quota or State quota and with the dismissal of these petitions, that interim order gets dissolved. In I.A.No.13 filed in W.P.[Civil] 393 of 2002, it is brought to our notice that the State of Kerala had extended period of Rank List upto December 31, 2002 only and thereafter applicants would

lose their eligibility. It is made clear that period of validity shall stand extended until the appropriate steps are taken by the concerned authorities in that State.

Interlocutory Applications filed shall stand disposed off in view of the order made by us in the main petitions.

.....J.  
[ S. RAJENDRA BABU ]

.....J.  
[ D.M. DHARMADHIKARI ]

.....J.  
[ G.P. MATHUR ]

NEW DELHI,  
JANUARY 27, 2003.



IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1069 2003  
(Arising out of SLP No.2421 of 2001)

St. Johns Teachers Training Institute

... Appellants

Versus

Regional Director, National Council  
for Teacher Education & Anr.

... Respondents

With Civil Appeal Nos. 1069-1097 of 2003 (Arising out of S.L.P (C) Nos.10351/2002, 10434/2002, 10760/2001, 10804-10805/2001, 10870/2001, 1386/2002, 1387/2002, 17761/2001, 17762/2001, 20419-20421/2002, 20818-20819/2002, 20879/2002, 20904-20905/2002, 20906-20907/2002, 20922/2001, 20924/2001, 20925/2001, 20927/2001, 21207/2002, 21208/2002, 2702/2001, 3972/2002, 3974/2002) WP (C) Nos.522/2002, 553/2002, 554/2002, 555/2002, 556/2002, 557/2002, 558/2002, 559/2002, 562/2002, 566/2002, 591/2002, 592/2002, 593/2002, 594/2002, 595/2002, 596/2002, 598/2002, 599/2002, 602/2002, 613/2002, 614/2002, 615/2002 and Civil Appeal Nos. 1098-1109 /2003 (Arising out of SLP(C) Nos.6996/2002, 7010/2002, 7046/2002, 7178/2001, 7783/2002, 8962/2002, 9812/2001, 24829-24830/2002, 28/2003, 15/2003 and 501/2003)

JUDGMENT

G.P. MATHUR, J.

Leave granted.

The question which requires consideration in this bunch of special leave petitions and writ petitions is whether Regulations 5 (e) and (f) framed

by National Council for Teachers Education (hereinafter referred to as 'the Council') are ultra vires the provisions of National Council for Teacher Education Act, 1993 (hereinafter referred to as 'the Act').

We will briefly refer to the facts of SLP No. 2421 of 2001 which is the leading case. The appellant claims to be a Christian Minority Teacher Training Institute and is run and managed by the Tamilnadu Educational Trust which is engaged in the field of education since 1989. The petitioner made an application to the Regional Director, National Council for Teacher Education (Southern Committee) Bangalore, seeking permission for starting a course in Elementary Education Training in the year 1999-2000. The respondents sent a letter dated August 18, 1999 stating that unless the State Government issued a "No Objection Certificate" (hereinafter referred to as 'NOC') the application of the petitioner shall be treated as incomplete and shall not be considered. The petitioner then filed a writ petition before the High Court of Karnataka praying that a writ of certiorari be issued for quashing the order dated August 18, 1999 issued by Regional Committee and further that Regulations 5(e) and (f) in so far as they direct obtaining of a NOC from the State Government be struck down as unconstitutional and a direction be issued to the Regional Director to consider the application of the appellant without insisting upon a NOC from the State Government. A

Single Judge of the Karnataka High Court had held that Regulations 5 (e) and (f) were ultra vires in another matter and against the said judgment the Council had preferred an appeal before the Division Bench of the High Court. The writ petition preferred by the appellant was heard along with the aforesaid appeal. After hearing the parties the Division Bench allowed the appeal filed by the Council and set aside the order of the learned Single Judge by which the Regulations were held to be ultra vires and invalid. Consequently, the writ petition filed by the appellant was also dismissed. The connected writ petitions have been filed under Article 32 of the Constitution praying that the Regulations 5(e) and (f) be declared as unconstitutional and invalid and a direction be issued to the respondents to consider the application moved by the petitioners for grant of recognition for starting a teacher training course without insisting upon a NOC from the State Government as provided in the aforesaid Regulations.

Shri K. Subramanian, learned Senior Counsel appearing for the appellants, has submitted that Section 14 of the Act lays down that every institution intending to offer a course or training in teacher education shall make an application to the Regional Committee concerned and the Regional Committee may pass an order granting recognition to such institution if it is satisfied that the institution has adequate financial resources,

accommodation, library, qualified staff, laboratory and that it fulfils such other conditions required for proper functioning of the institution and this shows that the entire exercise has to be done by the Regional Committee itself. However, Regulations 5 (e) and (f) which require obtaining of a NOC from the State Government also confer jurisdiction on the State Government in the matter of grant of recognition, which is wholly outside the purview of the Act. It is urged that the Act does not contemplate any role for the State Government but by insisting for obtaining a NOC from the State Government or Union Territory in which the institution is located, the Regulations have created another body to consider the application moved by an institution for grant of recognition which is not at all contemplated by the Act. Learned Counsel has submitted that in view of the express language used in Sub-section (3) of Section 14 of the Act, the satisfaction is to be that of the Regional Committee alone and no other authority or body, much less the State Government, can have any say in the matter which may have a bearing on the satisfaction of the Regional Committee. It is contended that under the guise of framing the Regulations, the power of recognition itself has been given to the State Government as in the event a NOC is not granted by the State Government, the application made to the Regional Committee is treated as incomplete and is not even considered on merits.



Lastly it has been urged that no guidelines have been given in the impugned Regulations to indicate the circumstances under which a NOC could be granted and therefore the impugned Regulations are wholly ultra vires and invalid. In support of his submission learned counsel has placed strong reliance on a decision of this Court in *Kunj Behari Lal Butail & Ors. v. State of H.P. & Ors.*, 2000 (3) SCC 40.

Shri MN Krishnamani, learned Senior Counsel appearing for the Council has submitted that having regard to the objects for which the Act has been enacted and the responsibility cast upon the Regional Committee under Sub-section (3) of Section 14 of the Act to be satisfied about the matters enumerated therein, namely, that the institution has adequate financial resources, accommodation, library, qualified staff, laboratory and that it fulfills other conditions required for proper functioning of the institution for a course or training in teacher education, it is not only desirable but also essential for an institution to obtain a NOC from the concerned State Government or Union Territory where it is situate. Learned counsel has submitted that there are only four Regional Committees in the whole country and it is physically not possible for them to obtain the relevant data which has to be appraised and considered before grant of recognition and this exercise can only be performed by the concerned State

Government which is in a far better position to do so. The main purpose obtaining a NOC from the State Government, it is contended, is to get the material and data on which the Regional Committee has to be satisfied before taking a decision on the question of grant of recognition under Sub section (3) of Section 14 of the Act and this is more in the nature of an input. Learned counsel has also submitted that no arbitrary power has been conferred on the State Government as the Council has issued guidelines for establishment of Teachers Training Institutes and introduction of new programmes and the State Governments are required to consider the matter in the light of the aforesaid guidelines while giving a NOC. It has thus been urged that as the function to be performed by the State Government is more in the nature of collection of relevant facts and material, there is no abdication of responsibility by the Regional Committee which alone shall pass an order either granting or refusing recognition to an institution and therefore the impugned Regulations are perfectly valid and *intra vires*.

In the counter-affidavit filed on behalf of the Council it is averred that for long the need for ensuring certain standards and excellence of education in teachers' training institutes, and establishing institutes with the high objectives of training teachers and educationists who have upon them the task of moulding the future of the nation was being felt. The life-less

stereotyped and dull teaching methods had to be replaced with a system that infuses dynamism and vibrance in the methods of imparting education. To achieve this it is necessary that only such institutes which are equipped with all the necessary inputs to train and produce teachers who are capable of instilling aesthetic excellence in the life of their pupil be established and permitted to run the teachers' training course. It was towards this end that the National Council for Teacher Education came to be established under the Act in the year 1993. In para 6 it is averred that the requirement of a NOC from the State Government was one of the issues that was deliberated upon by the members of the Council, including the experts from the field of education and academics. The State Governments have been assigned an important role in the task of development and improvement of teacher education and also in the matter for grant of recognition and permission. The States are also vitally interested in education and especially the professional courses. It is further averred that it is only the States which could correctly assess and know the extent of requirement of trained manpower and the supply of trained teachers keeping in view retirements, change of occupation etc. The State Government would also keep a track of number of trained teachers registered with the Employment Exchanges awaiting employment and the possibility of their deployment in the near future. It is

for this reason that the Council insists on a NOC from ~~the State Government~~, both when a fresh institution wants to start teacher training courses or when the recognised ones want to increase the intake of the students in the course. The States having trained teachers more than they are able to absorb ~~do not~~ want to be further burdened while those having shortage of trained teachers may encourage establishment of more institutions. Therefore, the input from the State Government by way of a NOC is vital for enabling the Council to discharge its functions of regulating the standards of teacher education since State Governments are the principal stakeholders in the field of teacher education. Without the involvement of the State Governments and availability of this vital input from the State Governments the Council would be greatly handicapped in discharging its functions. In para 9 it is averred that surplus of trained teachers without there being any possibility of absorbing them as teachers would lead to unnecessary drain on the state economy. In such a situation it would be wholly unjust to increase the burden on the State Government by training and throwing in market more trained teachers without there being any adequate avenues for their employment. The training of teachers cost both the State Governments and the trainees huge amount of money by way of fees and grants without there being any adequate scope for utilising their skills to compensate the costs

involved in their training. The State Government is vitally interested in the development of its education system and therefore it must be given a decisive role and a voice in the overall development of teacher education system in the country. It is only to prevent the undesirable situation wherein the Government is faced with the problem of having surplus trained teachers with no or little chance of their getting employment in the near future that the requirement of a NOC from the ~~State Government~~ has been incorporated. It is further averred that it is an enabling provision under the Act and does not pose any impediment or any disability in the effective discharge of the statutory responsibilities by the Council as the State Government has only been given the responsibility of determining the extent to which trained manpower is required in a particular State.

Before examining the contentions raised by the learned counsel for the parties, it will be convenient to briefly notice the relevant provisions of the Act. Section 2(c) defines the "Council" and it means the National Council for Teacher Education established under sub-section (1) of Section 3. Section 2(e) defines "institution", which means an institution which offers courses or training in teacher education. Section 2(j) defines "Regional Committee" which means a Committee established under Section 20. Section 2(k) defines "regulations" which means regulations made under

Section 32. Section 2(1) defines "teacher education" which means programmes of education, research or training of persons for equipping them to teach at pre-primary, primary, secondary and senior secondary stages in schools and includes non-formal education, part-time education, adult education and correspondence education. Section 3 provides for establishment by the Central Government, of a Council, called the National Council for Teachers Education and Section 12 provides for the functions of the Council. Section 14 lays down that every institution offering or intending to offer a course or training in teacher education on or after the appointed day, may, for grant of recognition under the Act, make an application to the Regional Committee concerned in such form and in such manner as may be determined by Regulations. Section 15 contains a similar provision where under any recognised institution intending to start any new course or training in teacher education, has to make an application seeking permission therefor to the Regional Committee concerned. Section 16 lays down that notwithstanding anything contained in any other law for the time being in force no examining body shall, on or after the appointed day, grant affiliation, whether provisional or otherwise, to any institution or hold examination, whether provisional or otherwise for a course or training conducted by a recognised institution unless the institution concerned has

obtained recognition from the Regional Committee concerned under Section 14 or permission for a course or training under Section 15. Section 17 gives power to Regional Committee to withdraw the recognition of recognised institutions if it is satisfied that some provisions of the Act or the rules or regulations or any condition subject to which recognition was granted has been contravened. Section 20 lays down that there will be four Regional Committees, namely, Eastern, Western, Northern and Southern Regional Committees. Section 31 confers power on the Central Government to make rules to carry out the provisions of the Act and sub-section (2) thereof enumerates the matters on which rules may be framed. Section 32 is important for the controversy in hand and the relevant part thereof is being reproduced below:-

“Section 32 (1) The Council may, by notification in the Official Gazette, make regulations not inconsistent with the provisions of this Act and the rules made thereunder, generally to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:-

- (a) .....
- (b) .....
- (c) .....
- (d) .....

- (e) the form and the manner in which an application for recognition is to be submitted under sub-section (1) of section 14;
- (f) conditions required for the proper functioning of the institution and conditions for granting recognition under clause (a) of sub-section (3) of section 14;
- (g) the form and the manner in which an application for permission is to be made under sub-section (1) of section 15;

.....”

In exercise of powers conferred by Section 32 of the Act the Council has framed Regulations known as National Council for Teacher Education (application for recognition, the manner for submission, determination of conditions for recognition of institutions and permission to start new course or training) Regulations, 1995 on December 29, 1995. Regulation 5 deals with the manner of making application and Regulation 8 deals with condition for recognition. Regulations 5 (e) and (f) and 8 read as under.

- “(e) Every institution intending to offer a course or training in teacher education but was not functioning immediately before 17<sup>th</sup> August, 1995, shall submit application for recognition with a no objection certificate from the State or Union Territory in which the institution is located.
- (f) Application for permission to start new course or training and/or to increase intake by recognised institutions under Regulation 4 above shall be submitted to the Regional Committee concerned with no objection certificate from the State or Union Territory in which the institution is located.



## 8. Condition for recognition

- (a) Regional Committee shall satisfy itself on the basis of scrutiny and verification of facts as contained in the application for recognition and or recognition of the institution where considered necessary of any other manner deemed fit, that the institutions has adequate financial resources, accommodation, library, qualified staff, laboratory and such other conditions required for the proper functioning of the institutions for the course of training in teacher education which are being offered or intending to offer.
- (b) Regional Committee shall ensure that every institution applying for recognition fulfil the conditions given in Appendix-III."

The provision in the above quoted Regulations for submitting the application for recognition with a NOC from the State Government or Union Territory in which the institution is located is challenged as ultra vires and invalid.

A Regulation is a rule or order prescribed by a superior for the management of some business and implies a rule for general course of action. Rules and Regulations are all comprised in delegated legislations. The power to make subordinate legislation is derived from the enabling Act and it is fundamental that the delegate on whom such a power is conferred has to act within the limits of authority conferred by the Act. Rules cannot be made to supplant the provisions of the enabling Act but to supplement it. What is permitted is the delegation of ancillary or subordinate legislative

functions, or, what is fictionally called, a power to fill up details. The legislature may, after laying down the legislative policy confer discretion on an administrative agency as to the execution of the policy and leave it to the agency to work out the details within the frame work of policy. The need for delegated legislation is that they are framed with care and minuteness when the statutory authority making the Rule, after coming in to force of the Act, is in a better position to adapt the Act to special circumstances. Delegated legislation permits utilisation of experience and consultation with interests affected by the practical operation of statutes. Rules and Regulations made by reason of the specific power conferred by the Statutes to make Rules and Regulations establish the pattern of conduct to be followed. Regulations are in aid of enforcement of the provisions of the Statute. The process of legislation by departmental Regulations saves time and is intended to deal with local variations and the power to legislate by statutory instrument in the form of Rules and Regulations is conferred by Parliament. The main justification for delegated legislation is that the legislature being overburdened and the needs of the modern day society being complex it can not possibly foresee every administrative difficulty that may arise after the Statute has begun to operate. Delegated legislation fills those needs. The Regulations made under power conferred by the Statute are supporting

legislation and have the force and affect, if validly made, as the Act passed by the competent legislature. (See *Sukhdev Singh v. Bhagatram* AIR 1975 SC 1331.

It will be useful to reproduce here a passage from Administrative Law by Wade & Forsyth (Eighth Edition 2000 at page 839) :

“Administrative legislation is traditionally looked upon as a necessary evil, an unfortunate but inevitable infringement of the separation of powers. But in reality it is no more difficult to justify it in theory than it is possible to do without it in practice. There is only a hazy borderline between legislation and administration, and the assumption that they are two fundamentally different forms of power is misleading. There are some obvious general differences. But the idea that a clear division can be made (as it can be more readily in the case of the judicial power) is a legacy from an older era of political theory. It is easy to see that legislative power is the power to lay down the law for people in general, whereas administrative power is the power to lay down the law for them, or apply the law to them, in some particular situation. ....”

The question whether any particular legislation suffers from excessive delegation has to be decided having regard to the subject matter, the scheme, the provisions of the Statutes including its preamble and the facts and circumstances in the background of which the Statute is enacted. (See *Registrar Co-operative Societies v. K. Kanjabmu*, AIR 1980 SC 350 and *State of Nagaland v. Ratan Singh* AIR 1967 SC 212). It is also well settled that in considering the vires of subordinate legislation one should start with

the presumption that it is intra vires and if it is open to two constructions, one of which would make it valid and other invalid, the courts must adopt that construction which makes it valid and the legislation can also be read down to avoid its being declared ultra vires.

The preamble of the Act is as under:-

"To provide for the establishment of National Council for Teacher Education with a view to achieving planned and coordinated development of the teacher education system throughout the country, the regulation and proper maintenance of norms and standards in the teacher education system and for matters connected therewith."

As the preamble shows the main object for enacting the Act is to achieve planned and coordinated development of the teacher education system and also the regulation and proper maintenance of norms and standards therein.

Sub-section (3) of Section 14 casts a duty upon the Regional Committee to be satisfied with regard to large number of matters before passing an order granting recognition to an institution which has moved an application for the said purpose. The factors mentioned in sub-section (3) are that the institution has adequate financial resources, accommodation, library, qualified staff, laboratory and that it fulfils such other conditions required for proper functioning of the institution for a course or training in

teacher education as may be laid down in the Regulations. As mentioned earlier there are only four Regional Committees in the whole country and, therefore, each Regional Committee has to deal with applications for grant of recognition from several States. It is therefore obvious that it will not only be difficult but almost impossible for the Regional Committee to itself obtain complete particulars and details of financial resources, accommodation, library, qualified staff, laboratory and other conditions of the institution which has moved an application for grant of recognition. The institution may be located in the interior of the district in a far away State. The Regional Committee cannot perform such herculean task and it has to necessarily depend upon some other agency or body for obtaining necessary information. It is for this reason that the assistance of the State Government or Union Territory in which that institution is located is taken by the Regional Committee and this is achieved by making a provision in Regulations 5(e) and (f) that the application made by institution for grant of recognition has to be accompanied with a NOC from the concerned State or Union Territory. The impugned Regulations in fact facilitate the job of the Regional Committees in discharging their responsibilities.

The contention that there are no guidelines for the State Governments regarding grant of a NOC and consequently the State Governments may

refuse to grant a NOC on wholly irrelevant considerations is without substance. It is averred in para 7 of the counter-affidavit filed by the Council that it has issued certain guidelines to the State Governments on February 2, 1996 for issuance of a NOC and a copy whereof has also been annexed. The relevant part of the guidelines is being reproduced below:-

"1. The establishment of Teacher Training Institutions by Government, private managements or any other agencies should largely be determined by assessed need for trained teachers. This need should take into consideration the supply of trained teachers from existing institutions, the requirement of such teachers in relation to enrolment projections at various stages, the attrition rates among trained teachers due to superannuation, change of occupation, death etc. and the number of trained teachers on the live register of the employment exchanges seeking employment and the possibility of their deployment. The States having more than the required number of trained teachers may not encourage opening of new institutions for teacher education or to increase the intake:

2. States having shortage of trained teachers may encourage establishment of new institutions for teacher education and to increase intake capacity for various levels of teacher education institutions keeping in view the requirements of teachers estimated for the next 10-15 years.

3. Preference might be given to institutions which tend to emphasize the preparation of teachers for subjects (such as Science, Mathematics, English etc.) for which trained teachers have been in short supply in relation to requirement of schools.

4. Apart from the usual courses for teacher preparation, institutions which propose to concern themselves with new emerging specialities (e.g. computer education, use of electronic media, guidance and counselling etc.) should receive priority. Provisions for these should however, be made only

after ensuring that requisite manpower, equipment and infrastructure are available. These considerations will also be kept in view by the institution intending to provide for optional subjects to be chosen by students such as guidance and counselling special education etc.

5. With a view to ensuring supply of qualified and trained teachers for such specialities education of the disabled nonformal education, education of adults, preschool education, vocational education etc. special efforts and incentives may be provided to motivate private managements/voluntary organisations for establishment of institutions, which lay emphasis on these areas.

6. With a view to promoting professional commitment among prospective teachers, institutions which can ensure adequate residential facilities for the Principal and staff of the institutions as well as hostel facilities for substantial proportion of its enrolment should be encouraged.

7. Considering that certain areas (tribal, hilly regions etc.) have found it difficult to attain qualified and trained teachers, it would be desirable to encourage establishment of trained institutions in those areas.

8. Institutions should be allowed to come into existence only if the sponsors are able to ensure that they have adequate material and manpower resources in terms, for instance, of qualified teachers and other staff, adequate buildings and other infrastructure (laboratory, library, etc.) a reserve fund and operating funds to meet the day to day requirement of the institution, including payment of salaries, provision of equipment etc. Laboratories, teaching science methodologies and practicals should have adequate gas plants, proper fittings and regular supply of water, electricity, etc. They should also have adequate arrangements. Capabilities of the institution for filling norms prepared by NCTE may be kept in view.

9. In the establishment of an institution preference need to be given to locations which have large catchment area in terms of schools of different levels where student teachers can be

exposed to demonstration lessons and undertake practice teaching. A training institution which has a demonstration school where innovative and experimental approaches can be demonstrated could be given preference."

A perusal of the guidelines would show that while considering an application for grant of a NOC the State Government or the Union Territory has to confine itself to the matters enumerated therein like assessed need for trained teachers, preference to such institutions which lay emphasis on preparation of teachers for subjects like Science, Mathematics, English etc. for which trained teachers are in short supply and institutions which propose to concern themselves with new and emerging specialities like computer education, use of electronic media, etc. and also for speciality education for the disabled and vocational education etc. It also lays emphasis on establishment of institutions in tribal and hilly regions which find it difficult to get qualified and trained teachers and locations which have catchment area in terms of schools of different levels where student teachers can be exposed to demonstration lessons and can undertake practice teaching. Para 8 of the guidelines deals with financial resources, accommodation, library and other infrastructure of the institution which is desirous of starting a course of training and teacher education. The guidelines clearly pertain to the matters enumerated in sub-section (3) of Section 14 of the Act which have to be taken into consideration by the Regional Committee while



considering the application for granting recognition to an institution which wants to start a course for training in teacher education. The guidelines have also direct nexus to the object of the Act namely, planned and coordinated development of teacher education system and proper maintenance of norms and standards. It cannot, therefore, be urged that the power conferred on the State Government or Union Territory, while considering an application for grant of a NOC, is an arbitrary or unchanelled power. The State Government or the Union Territory has to necessarily confine itself to the guidelines issued by the Council while considering the application for grant of a NOC. In case the State Government does not take into consideration the relevant factors enumerated in Sub-section (3) of Section 14 of the Act and the guidelines issued by the Council or takes into consideration factors which are not relevant and rejects the application for grant of a NOC, it will be open to the institution concerned to challenge the same in accordance with law. But, that by itself, cannot be a ground to hold that the Regulations which require a NOC from the State Government or the Union Territory are *tra vires* or invalid.

Learned counsel for the appellants has also submitted that the signed Regulations have the effect of conferring the power of consideration of the application for the grant of recognition under Section 14

of the Act upon the State Government, as in the event of rejection of a NOC the application is not even registered by the Council. This contention no longer survives on account of a subsequent development. Shri MN Krishnamani, learned senior counsel appearing for the respondents, has submitted that the Council has made fresh Regulations on November 13, 2002 which are known as the NCTE (Form of application for recognition, the time of submission of application, determination of norms and standards for recognition of teacher education programmes and permission to start new course or training) Regulations, 2002. Regulation 6 thereof reads as under:

#### **“Regulation 6**

**Requirement of No Objection Certificate from the State Government/U.T. Administration**

- (i.) Application from every institution seeking recognition to start a course or training in teacher education or from an existing institution seeking permission to start a new course or training and/or increase in intake shall be accompanied by a No Objection Certificate (NOC) from the State or Union Territory in which the institution is located.

into account the infrastructural and instructional facilities available in the institution and other relevant provisions in the Norms and Standards applicable to the relevant teacher training programme.

- (iv) The NOC issued by the State Government/UT Administration will remain valid till such time the State Government/UT Administration withdraws/cancels it.
- (v) The NOC will be deemed to have lapsed if the institution fails to get recognition within three years from the date of its issue.
- (vi) Requirement of NOC shall not apply to Government Institutions.
- (vii) Requirement for NOC shall not apply to University Department for taking up innovative teacher education programme for a maximum intake of 50 (fifty only). The question as to whether a programme is innovative will be decided by the concerned Regional Committee."

Regulation 6(ii) of these Regulations provides that the endorsement of the State Government/Union Territory Administration in regard to issue of NOC will be considered by the Regional Committee while taking a decision on the application for recognition. This provision shows that even if the NOC is not granted by the concerned State Government or Union Territory and the same is refused, the entire matter will be examined by the Regional Committee while taking a decision on the application for recognition. Therefore, the grant or refusal of a NOC by the State Government or Union Territory is not conclusive or binding and the views expressed by the State Government will be considered by the Regional Committee while taking the

decision on the application for grant of recognition. In view of these new Regulations the challenge raised to the validity of Regulations 5(c) and (f) has been further whittled down. The role of the State Government is certainly important for supplying the requisite data which is essential for formation of opinion by the Regional Committee while taking a decision under Sub-section (3) of Section 14 of the Act. Therefore no exception can be taken to such a course of action.

In *Kunj Behari Lal Butail & Ors. v. State of I.P. & Ors.* (supra) cited by learned counsel for the appellant, it has been held that a delegated legislation must conform to the provisions of the Statute under which it is framed and that it must also come within the scope and purview of the rule making power of the authority framing the rule and in the event either of these two conditions are not fulfilled, the rule so framed would be void. As discussed earlier, the impugned Regulations do not contravene any one of the conditions inasmuch as Section 32 of the Act clearly empowers the Council to make Regulations generally to carry out the provisions of the Act and thus they come within the scope and purview of the power of the authority framing the Regulations. The Regulations also conform to the provisions of the Act and are not in excess of the authority of the Council as no essential legislative function has been delegated to the State Government.

Learned counsel for the appellant has strongly urged ~~that in some~~ cases the State Government has sat over the matter for very long period without taking any decision either to grant a NOC or declining to grant the same and on account of this inaction of the State Government the application moved by the institutions before the Regional Committee was not even registered for consideration and thereby the right of the appellants to establish an institution for teachers' training or starting a course in teacher education was completely defeated. There can be no manner of doubt that the State Government must take a decision on the ~~application moved by an~~ institution for grant of a NOC within a reasonable time. If the State Government does not take a decision within a reasonable time it will obviously defeat the right of an institution to have its application considered by the Regional Committee. It will therefore be proper that the Council frames appropriate Regulations fixing the time limit within which a decision should be taken by the State Government on the application moved by an institution for grant of a NOC. In the present cases, we are of the opinion that till such Regulations are made the decision should be taken by the State Governments within four months, failing which it shall be deemed that the NOC has been granted.



IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.152/1994

(From the Judgment of Origin dated 24th August, 1992 of  
the High Court of Calcutta in C.O.T. 1687 of 1992)

Subhashis Bakshi & Ors.

..Appellants

Versus

West Bengal Medical Council & Ors.

..Respondents

PRESENT:

THE 14TH FEBRUARY, 2003

Present:

HON'BLE MR. JUSTICE S. RAJENDRA BABU  
HON'BLE MR. JUSTICE ASHOK BHANU

R.F. Nariman, E. Sen, Tapas M. Sr. Advs Arunabh  
Chowdhury, Ms. Anantika Keswani, R.W. Karanjewala, Ms.  
Manik Karanjewala, G.K. Banerjee, Dilip Sinha, D.Krishnan,  
D.P. Mohan, Sinha & Das, Ranjan Mukherjee, L.P. Singh,  
Amitesh Kumar, & Ms. Bharati Anand advs. for the  
appearing parties.

JUDGMENT

THE Following Judgment of the Court was delivered.





IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
CIVIL APPEAL NO 112 OF 1981

Subhasis Bakshi & Ors.

*versus*

West Bengal Medical Council & Ors.

**JUDGMENT**

**RAJENDRA BABU, J. :**

"Thou shall not prescribe, but treat". Does this commandment stand the test of legal scrutiny? This is the stark and simple question to be decided in this case.

The long-winded facts of this case read as follows:

That about 337 persons, including the appellants had completed the diploma course of Community Medical Service in duly recognized institutions in the State of West Bengal and were posted in different parts of the State by the Government of West Bengal. On October 15, 1980 vide Notification No. Health/MA/7076/5M-5/80 the Government of West Bengal made an amendment in the Statute of the State Medical Faculty by introducing Article 6F under Part B, which reads *verbatim* as under:

"6F: Students who will undergo and complete the requisite course of studies in Medicine/Medical Science (as defined and detailed in the Schedule to this article and hereinafter called as the said Regulations for the Diploma course in Community Medical Services) in Medical Institutions, duly recognized by the State Medical Faculty of West Bengal, shall be admitted into examinations in the subjects laid down in the said regulations and the students passing the examinations shall be granted Diploma with the abbreviation "Dip. C.M.S", by the Governing body of the aforesaid Faculty.

The Governing Body of the aforesaid Faculty shall also maintain a Register of such Diploma holders with a view to regulating, supervising and restricting their practice for the present."

The objective of the said Notification, as detailed therein, is as follows:

**"I. Objectives:**

- i). To provide medical training to a group of personnel to man the Health Centers and Subsidiary Health Centers.
- ii). Emphasis is to be given on comprehensive Health Care of the Community including promotive, preventive and curative aspects.
- iii). A candidate after successfully completing the course of studies will act as a Team Leader of various categories of Field Workers.
- iv). Training in curative medicines is to be imparted in such a way that after completion of training the trainees can treat common diseases among rural population including communicable diseases, malnutritional states, snake bite, insecticidal poisoning etc. Instructions on diseases requiring sophisticated treatment not practicable in Health Centers will be restricted to the barest minimum. However, such candidates should learn to recognize sign and symptoms of more serious diseases requiring special treatment at referral hospitals (e.g., Sub-divisional or District Hospital) so that such patients may be sent early to these institutions.
- v). The training in promotive and preventive aspect of Health Care including Family Planning and Child Care should be undertaken by actual

participation in the field work under the supervision of their teachers along with the field workers.

vi). A substantial part of the training will be conducted in Health Centers where they will reside along with their teacher in each term of their course so that they are exposed to the field condition from the beginning of their course."

On 23/6/1987, the Government of West Bengal issued a Corrigendum and the Diploma that was earlier known as 'Diploma in Medicine for Community Physicians' was rechristened as 'Diploma in Community Medical Service.' Apprehending that the re-naming would have a detrimental effect on their rights, the appellants filed W.P. No.7052/89 in the Calcutta High Court. The said Writ Petition was disposed of by the learned Single Judge on the assurance given by the Government Pleader that the State was willing to award the 'Diploma in Community Medical Service' to the successful candidates. It was also assured by the State, in the said petition that it would provide jobs to such candidates in accordance with the stated policy of the Government. The learned Single Judge of the High Court made it clear that the Diploma Holders will not have the right to private practice and that part of the order was not challenged by the appellants at all and entry in the register is only for the right to prescribe medicines and issue certificates.

Aggrieved by the order of the learned Single Judge, the appellants preferred an appeal before the Division Bench of Calcutta High Court. The Division Bench assured that the change in the nomenclature would not affect the Appellants right. The Division Bench reiterated that "the persons holding the

Diploma and employed to man the Health Centers and Subsidiary Health Centers would be competent to treat common diseases among rural population including communicable disease, malnutritional states, snake bite, insecticidal poisoning etc...". The Division Bench also mentioned the stated Government policy on providing jobs to such Diploma holders. Upon this the High Court opined that in the light of the clarifications made by and on behalf of the State Medical Faculty and the State, there should be no reason for the appellants to entertain any kind of apprehension with regard to their being able to perform functions and duties which they as are entitled to do under the Regulations as amended vide notification dated October 10, 1980. Pertaining to the registration of names in the Register of Diploma holders, the High Court stated that the Register shall be prepared and will be maintained in accordance with and in terms of the Statute 6F and that necessary formalities in that regard will be completed on or before March 31, 1990.

This judgment of the High Court was not complied with by the State. Contempt Application was filed on September 7, 1990 in the High Court. By the time, on November 21, 1990 Director of Health Services, West Bengal vide Order No. HPH/10 'S-3-90/1512 issued Job Description of Community Health Service Officers. While hearing the Contempt Application on November 23, 1990 the High Court accepted the assurance given by the Secretary to the Government in Department of Family Welfare in the presence of Secretary of the Medical Faculty and the State Medical Council that the Government would issue fresh instructions to the Job Description of Community Health Officers. These fresh

instructions, were assured, would be issued in accordance with the earlier judgment of the Bench. On December 10, 1990 the aforementioned description was partially modified vide Order No. HPH/10-'S-3-90/1629. By virtue of this Order, the Diploma Holders were allowed to treat common diseases among rural population as provided in the sub-clause (iv) of the objectives to the Notification dated October 15, 1980 and it was also mentioned that item No 17 in the Notice issued under No 1512 dated November 21, 1990 was treated as omitted. Another Order No HPH/10-'S-3-90/1630 was issued on the same day which says that the Diploma Holders were "not permitted to issue Death Certificate, Sickness Certificate or Medical Fitness Certificates required for Court cases" and also directed that the treatment advice and prescription made by them were to be counter signed by the EMO or the MO-in-charge. While on March 6, 1991 vide Memo No. HPH/10-'S-3-90/222 the Order No HPH/10-'S-3-90/1630 dated December 10, 1990 was cancelled. By Order dated May 7, 1991 the High Court disposed of the contempt proceeding by making the direction to the Government that they would maintain a register of the Diploma Holders in terms of the Article 6F of the original Notification. It is also clarified by the High Court in the Order that the "Registration by the State Medical Faculty will authorize the Community Health Service Officers to continue to discharge their duties as specified in the duty chart in the Health Centers/Subsidiary Health Centers as long as they are in service." Upon this high note, the first round of litigation before the Calcutta High Court was concluded.

At this juncture, by virtue of the order of the High Court, the appellants had obtained the right to treat common diseases among rural population including communicable diseases, malnutritional states, snake bites, insecticidal poisoning etc. But their grievance is that the consequential right of issuing certificates of sickness or death, prescriptions etc. was taken away by Notification No. HPH/10-S-3-90/1630 dated November 21, 1990. It is also the case of the appellants that item no 17 of the said notification was cancelled. Challenging the denial of 'consequential rights to treat' such as right to issue prescription or certificates of sickness or death, the second round litigation was initiated.

The appellants anchored their case on a Notification No. 1076-Medical dated May 17, 1915 issued by the then Financial Department, Government of Bengal. The relevant portion of the said Notification is extracted hereunder:

"In exercise of the power conferred by clause (1) of Section 18 of the Bengal Medical Act, 1914 (Bengal Act, VI of 1914) and on the recommendation of the Bengal council of Medical Registration, the Governor in Council is pleased to direct that a title, certificate of qualification, Diploma or license granted by the Governing Body of the State Medical Faculty, to any person shall subject to the provisions referred to in the said Clause entitled the holder of such title, certificate of qualifications, Diploma or License to have his name entered in the Register of Registered practitioners maintained under Section 15 of the said Act."

By virtue of this Notification read with Sections 15 and 18 of the Bengal Medical Act, 1914, the appellants argues that they are entitled to enter their names in the Register of Registered Practitioners maintained by the Bengal Council of Medical Practitioners. Urging this a Writ Petition was filed before the learned Single Judge of Calcutta High Court. The Petition was allowed in favour

of these appellants, subject to the condition that they are not allowed to pursue Private Practice and making it clear that their only right is to prescribe medicines and issue certificates and this part of the order became final.

Aggrieved by this order of the learned Single Judge of the High Court, the Bengal Medical Council preferred an appeal before the Division Bench of Calcutta High Court. The Division Bench allowed the appeal and set-aside the decision of the learned Single Judge. There are two main reasons given by the Division Bench to vacate the Writ. They are - (1). "...The *sine qua non* for the application and operation of Section 18 are- (a) satisfaction of the Council that any particular qualification is sufficient guarantee for the requisite knowledge or skill for efficient medical practice, (b) report to that effect by the Council to the Government, and (c) direction by the Government, on acceptance of such report, by notification in the Official Gazette. We do not think that in 1915, the Council could in any way be satisfied as to the quality or merit of a course or qualification introduced in 1980 and could report its satisfaction by some sort of divine prescience or foresight. Not do we think that the Government could by a Notification recognize or approve a course or certificate or qualification *in futuro* or *in vacuo*, in respect of a course or certificate which was not in existence at the date of Notification." (2). Relying on *A.K. Sabhapathy v. State of Kerala*, AIR 1992 SC 1310 it was found that 'a person can practice in allopathic system of medicine in a state or in the country only if he possesses a recognized medical qualification' and since the appellants doesn't possesses the required

qualification, it was held that their names could not be included in the Medical Register. Thus this appeal by special leave.

The only relief, which these appellants are seeking, is the protection of their 'consequential rights to treat' such as issuing prescriptions or sickness or death certificates. As a matter of fact the respondents do not dispute the validity of Notification No. Health/MA/7076/5M-5/80 dated October 15, 1980. It is by virtue of this Notification that the appellants were having the right to treat. Now the only question for consideration is whether the Appellants, who are having the right to treat could issue prescription or sickness or death certificates?

In this context it is worthwhile to discuss *Dr. Mukhtiar Chand v. State of Punjab*, (1998) 7 SCC 579. In this case the validity of Notifications issued by State Governments of Punjab and Rajasthan, under Rule 2(ee)(iii) of the Drugs and Cosmetics Rules, 1945 whereby the Governments declaring some vaid/hakims as persons practicing modern medicines were challenged. Upholding the validity of the Notifications and the said Rule, this Court held that, for the purpose of Drugs Act "...what is required is not the qualification in modern scientific system of medicine but a declaration by a State Government that a person is practicing modern scientific system and that he is registered in a Medical Register of the State...". In *Dr. Mukhtiar Chand*, this Court also clarifies that there could be two registers for medical practitioners i.e, Indian Medical Register and State Medical Register. As far as the State Medical Registers are concerned the concerned State Government according to the rules will determine the required



qualification. While recognizing the rights of vaidas or hakims to prescribe allopathic medicines, this Court also took into account of the fact that qualified allopathic doctors were not available in rural areas and the persons like vaidas / hakims are catering to the medical needs of residents in such areas. Hence the provision which allows them to practice modern medicine was found in the public interest. In this context *Dr. Mukhtiar Chand* holds that "...It is thus possible that in any State, the law relating to registration of practitioners of modern scientific medicine may enable a person to be enrolled on the basis of the qualifications other than the 'recognized medical qualification' which is a prerequisite only for being enrolled on the Indian Medical Register but not for registration in a State Medical Register. Even under the 1956 Act, 'recognized medical qualification' is sufficient for that purpose. That does not mean that it is indispensably essential. Persons holding 'recognized medical qualification' cannot be denied registration in any State Medical Register. But the same cannot be insisted for registration in a State Medical Register. However, a person registered in a State Medical Register cannot be enrolled on the Indian Medical Register unless he possesses 'recognized medical qualification'. This follows from a combined reading of Sections 15(1), 21(1) and 23. So by virtue of such qualifications as prescribed in a State Act and on being registered in a State Medical Register, a person will be entitled to practice allopathic medicine under Section 15(2)(b) of the 1956 Act." Based on this reasoning this Court partially overruled *A.K. Sabhapathy*, which earlier ruled that a person could practice allopathic medicine only if he possess a recognized medical qualification. In *Medical Council of India & Another v.*

*State of Rajasthan and Anr*, (1996) 7 SCC 731 (2 judges), it was observed that "...It would thus be clear that the basic qualification of MBBS as a primary qualification is a precondition for a candidate for being registered in the State Medical Register maintained by the State Board...". Identical view expressed in the decision in *A.K. Sabhapathy* on the same point having been overruled, this view in *Medical Council of India vs. State of Rajasthan* [supra] also stands impliedly overruled.

Coming back to the case in hand, the Division Bench in the impugned judgment relied upon *A.K. Sabhapathy* to deny the appellants' right to prescribe medicines or to issue sickness or death certificates and held that the appellants do not possess the 'recognized medical qualification'. In the light of the ruling in *Dr. Mukhtiar Chand* this view of the Division Bench cannot be sustained. Therefore there is no bar to register the name of the appellants in the State Medical Register.

Now the only issue for consideration is whether the right to issue prescription or certificates could be treated as a part of right to treat. In *Dr. Mukhtiar Chand* it was pointed out that "...because prescribing a drug is a concomitant right to practice a system of medicine. Therefore, in a broad sense, the right to prescribe drug of a system of medicine would be synonymous with the right to practice that system of medicine. In that sense, the right to prescribe an allopathic drug cannot be wholly divorced from the claim to practice allopathic medicine." The appellants are validly holding the right to treat certain diseases.

So their right to issue prescriptions or certificates cannot be detached from their right to treat. Such right to issue certificates or prescriptions is imbibed in the right to treat. One cannot and shall not be separated from the other. Once the right to treat is recognized, then the right to prescribe medicine or issue necessary certificate flows from it. Or else the right to treat cannot be completely protected. Hence, even assuming for a moment that the 1915 Notification is not there, still the appellants' right to prescribe medicine cannot be denied. In that view of the matter, the order of the Division Bench is set aside and that of the learned Single Judge is restored.

Therefore, the respondents shall make necessary arrangements to include the names of all the concerned Diploma holders in the State Medical Register for the limited purpose indicated therein within a period of six months from today. The appeal is allowed accordingly.

.....J.  
[S. RAJENDRA BABU]

.....J.  
[SHIVARAJ V. PATIL]

NEW DELHI,  
FEBRUARY 14, 2003.



IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 4852-53 OF 2000

( From the Judgment and Order dated 29.3.2000 of the Andhra Pradesh High Court in W.A.Nos. 341 and 1500 of 1999)

N.T.R. University of Health  
Sciences, Vijaywada

..Appellant

v.

G.Babu Rajendra Prasad and Anr.

..Respondents

THE 10TH DAY OF MARCH, 2003

Present:

Hon'ble the Chief Justice

Hon'ble Mr.Justice S.B.Sinha

Hon'ble Dr.Justice AR.Lakshmanan

G.Prabhakar. Adv. for the appellant.

JUDGMENT

The following Judgment of the Court was delivered:



IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.4852-53 OF 2000

N.T.R. University of Health  
Sciences, Vijaywada

..Appellant

versus

G. Babu Rajendra Prasad & Anr.

... Respondents

## J U D G M E N T

S.B. SINHA, J :

Whether the Government of Andhra Pradesh while framing A.P. Educational Institutions (Regulation of Admissions) Order, 1974 made in terms of Article 371-D of the Constitution of India was bound to provide reservation for 15% of non-local seats, although reservations in terms of its policy decision had been taken in respect of seats available for local candidates, is the question involved in these appeals which arise out of a judgment and order dated 29.03.200 of the Full Bench of the Andhra Pradesh High Court.

The First Respondent herein is said to be a member of Scheduled Caste. He questioned the validity of policy decision of the State of Andhra Pradesh as regards non-reservation for Scheduled Castes, Scheduled Tribes and Backward Classes by filing a writ petition in the High Court

A learned Single Judge of the Andhra Pradesh High Court by a judgment and order dated 27.10.1998 directed the appellant herein to reserve seats for the reserved category for 15% open seats also. A review application filed by the appellant herein before the learned Single Judge was dismissed. Thereafter, the appellant preferred a letters patent appeal before the Division Bench questioning the said order of the learned Single Judge. The Division Bench, however, noticing conflict in some decisions on the question referred the matter to a Full Bench on the following question :

“Whether the reservations in terms of Article 15(4) of the Constitution of India in favour of Scheduled Castes, Scheduled Tribes and Backward Classes could be provided even in respect of 15% of the unreserved seats under the Presidential Order, 1974.”

By reason of the impugned judgment the said appeals were dismissed.

The appellant is, thus, in appeal before us.



By reason of the Constitution 32<sup>nd</sup> Amendment Act, a special provision by way of Article 371-D of the Constitution of India was inserted in respect of the State of Andhra Pradesh relating to both employment and education; pursuant to or in furtherance whereof the President was empowered to make orders in relation thereto contained in different provisions for different parts of the State. Pursuant to or in furtherance of the said power, A.P. Educational Institution (Regulation of Admissions) Order, 1974 (hereinafter referred to as the Presidential Order) was made. The relevant provisions of the Presidential Order are as under :-

(A) Para-2 "available seats" in relation to any courses of study as number of seats provided in that course for admission at any time after excluding those reserved for candidates from outside the State. It defines "local area" in respect of any University or other educational institution as the local area specified in para-3 of the order for the purpose of admission to such University or other educational institution.

(B) Para-3 carves out the local areas by reference to the earliest Universities operating in Andhra, Telengana and Rayalaseema areas of the State. Andhra University, Osmania University and Sri Venkateswara University and delineates the district comprised in such local area.

(C) Para-4 sets out the qualifications for determining local candidates with reference to study in an educational institution or institutions for specified period or in the alternative with reference to residence in the local area.

(D) Para-5 enjoins that admission to 85% of the available seats in every course of study provided by Andhra, Nagarjuna, Osmania, Kakatiya or Sri Venkateswara Universities or by educational institution other than a State wide University or State-wide educational institution which is subject to control of the State Government, shall be reserved in favour of the local candidates in relation to the local area in respect of such University or other educational institution. Sub-para (2) of this para states while determining number of seats to be reserved in favour of the local candidates under sub para (1) any fraction of seats shall be counted as one. The proviso to the para ordains that there should be at least one unreserved seat.

(E) Para-8 enables the President by order to require the State to issue such directions as may be necessary or expedient effectuating the provisions of the order to any University or other educational institution which shall comply with such directions.

(F) Para-9 reiterates the overriding effect set out in clause (10) of the parent Article and mandates that the provisions of the order shall have the effect notwithstanding anything contained in any statute, ordinance, rules, regulations, or other orders whether made before or after the commencement of the Presidential Order irrespective of the admissions

(G) Para-10 provides that nothing in the order shall affect the operation of any provisions made by the State Government or other competent authority whether before or after the commencement of the order in respect of reservations in the matter of admissions to any

University or the educational institution in favour of women, socially and educationally backward class of citizens, the Schedule Castes and Scheduled Tribes, in so far as such provisions are not inconsistent with the order.

With a view to prescribe the procedure adopted for admissions, the Government of Andhra Pradesh issued G.O.Ms. No.646 dated 10.7.1979 whereby and whereunder it was directed that the procedure framed in Annexure-III thereto would be followed in the matter of implementation of reservations in favour of local candidates provided under the Presidential Order in respect of non-Statewide Universities and non-Statewide educational institutions subject to its control; the relevant provisions whereof are as under :-

“1. The number of “available seats” in the course of study shall first be computed by deducting from the total number of sets provided in that course, and the number of seats reserved for candidates from outside the State.

2. The number of seats reserved in favour of local candidates in relation to local area in respect of the University or other educational institution concerned shall then be determined; this number shall be 85% of the available seats, any fraction of a seat being counted as one provided that there shall be at least one unreserved seat;

3. From amongst all eligible applicants, whether such applicants are local candidates or not, a provisional list of admission to fill the available seats shall be drawn up. This provisional list shall be prepared on the basis of the relative merit of all eligible applicants and the reservations in favour of Scheduled Castes, Scheduled Tribes and Backward Classes, women etc., as provided under the relevant rules of admission. The candidates included in the provisional admission list shall be arranged in order of merit or where the rules of admission provide for their arrangement in any other order, in the order so provided."

Mr. G. Prabhakar, learned counsel appearing on behalf of the appellant has raised a short question in support of this appeal. The learned counsel would submit that the High Court committed a manifest error in issuing the impugned direction insofar as it failed to take into consideration that having regard to the fact that the appellant has already made reservations to the extent of 15%, 6% and 25% for Scheduled Castes, Scheduled Tribes and Backward Classes respectively covering 85% of the seats, no further reservation could be made in respect of balance 15% of the seats as by reason thereof the seats reserved for the reserved category candidates would exceed 50%. It has been pointed out that out of 17 seats for admission in the post graduate courses 8 seats were already reserved which would account for 46% of the seats and, thus, if reservation is directed

to be made in relation to 2 seats, which would have gone to the local candidates, one seat out of it will have to be reserved, which would mean reservation in excess of the quota of reservation made in terms of Regulation 4 which reads thus :

#### "4. RESERVATION IN FAVOUR OF THE LOCAL CANDIDATES

- (A) Admission to 85% of the seats shall be reserved in favour of the local candidates in relation to the local area as provided in A.P. Educational Institutions (Regulations of Admission) Order, 1974 as amended from time to time.

#### STATE-WIDE COURSE :

M.D.(R.T) is State-wide course and admission to this course shall be regulated as per the provision in the A.P. Educational Institutions (Regulations of Admission) Order, 1974 for State-wide course.

#### (B) LOCAL AREA :

- i) The part of the State comprising the Districts of Srikakulam, Vizianagaram, Visakhapatnam, East Godavari, West Godavari, Krishna, Guntur and Prakasam (Andhra University and Nagarjuna University area) shall be regarded as the local area for the purpose of admission to the Andhra Medical College, Visakhapatnam, Rangaraya Medical College, Kakinada and Guntur Medical College, Guntur.
- ii) The part of the State comprising the Districts of Adilabad, Hyderabad (including twin cities) Rangareddy, Karimnagar, Khammam, Medak, Mahaboobnagar, Nalgonda, Nizamabad and Warangal

(Osmania University and Kakatiya University area) shall be regarded as local area for the purpose of admission to the Osmania Medical College, Hyderabad, Gandhi Medical College, Hyderabad and Kakatiya Medical College, Warangal.

- iii) The part of the State comprising the Districts of Ananthapur, Kurnool, Chittoor, Cuddapah and Nellore (S.V. University area) shall be regarded as local area for the purpose of admission to the Kurnool Medical College, Kurnool, and S.V. Medical College, Tirupati.

(C) LOCAL CANDIDATES :

- I) A candidate for admission shall be regarded as local candidate in relation to a local area.
- i) If he/she studied in an Educational Institution or Educational Institutions in such local area for a period of not less than 4 consecutive academic years ending with the academic year in which he/she appeared or as the case may be first appeared in relevant qualifying examination.

Or

- ii) Where during the whole or any part of the 4 consecutive academic years ending with the academic year in which he/she appeared or as the case may be first appeared for the relevant qualifying examination, he/she has not studied in Educational Institutions, if he/she had resided in that local area for a period of not less than 4 years immediately preceding the date of commencement of the relevant qualifying examination, in which he/she appeared or as the case may be first appeared.
- II) A candidate for admission to any course of study who is not regarded as a local candidate under sub-regulation (1) above in relation to any local area shall

i) If he/she has studied in educational institutions in the State for a period of not less than 7 consecutive academic years ending with academic year in which he/she appeared or as the case may be first appeared for the relevant qualifying examination be regarded as local candidate in relation to;

a) Such local area where he/she has studied for the maximum period out of the said period of 7 years

Or

b) Where the period of his/her study in two or more local areas are equal, such local area where he/she has last studied in such equal periods

ii) If during the whole or any part of seven consecutive academic years ending with academic year in which he/she appeared or as the case may be first appeared for relevant qualifying examination, he/she has not studied in the educational institution in any local area, but he/she has resided in the State during the whole of the said period of 7 years be regarded as a local candidate in relation to

a) Such local area where he/she has resided for the maximum period out of the said period of seven years.

Or

b) Where the period of his/her residence in two or more local areas are equal, such local area where he/she has resided last in such equal periods.

**EXPLANATION :** (for purpose of this sub-regulation)

i) "Educational Institutions" means a University or any Educational Institution recognized by the State Government, a University or any other competent authority.

- ii) "Relevant qualifying examination in relation to admission to any course of study" means the examination, a pass in which is the minimum educational qualification for admission to such course of study.

NOTE: The relevant qualifying examination for admission to Post-Graduate courses is MBBS examination. The question whether the candidate is a local candidate or not will be determined with reference to his/her first appearance in the Part II of Final MBBS examination.

- iii) a) In reckoning the consecutive academic years during which a candidate has studied any period of interruption of his/her study by reasons of his/her failure to pass any examination and any period of his/her study in a statewide University or a statewide educational institution shall be disregarded.

b) The status of candidates who passed MBBS from Siddhartha Medical College will be decided basing on their study period prior to their admission into MBBS course at Siddhartha Medical College for arriving at the local and non-local status. since it is a statewide institution.

- iv) The question whether any candidate for admission to any course of study has resided in any local area shall be determined with reference to the places where the candidate actually resided and not with reference to the residence of his/her parent or guardian.

- (D) While determining under sub-regulation (A) the number of seats to be reserved in favour of local candidates, any fraction of seat shall be counted as one, provided that there shall be one unreserved seat.



- (E) If a local candidate in respect of a local area is not available to fill any seats reserved or allocated in favour of local candidate in respect of that local area such seats shall be filled in as if it had not been reserved.
- (F) The applicant who claims to be a local candidate with reference to sub-regulation 4(C)(1)(i) or 4(C)(II)(i) shall produce in the form of study certificate/certificates issued by the Head of the Educational Institution/Institutions concerned indicating the details of the year or years in which the candidate has studied in educational institution in such local area for a period of not less than 4/7 consecutive academic years ending with the academic year in which he/she appeared or as the case may be first appeared for the Part-II of Final MBBS examination.

Those who did not qualify as local candidate under sub-regulation 4(C)(1)(i) and 4(C)(II)(i) but claim to qualify by virtue of residence shall produce a certificate issued by an officer of the Revenue Department not below the rank of Mandal Revenue Officer independent charge of sub-taluk/Mandal in the form annexed to G.O.P. No.628 education dated 25.7.1974 appended to application form with necessary modification.

- (G) The following categories are eligible to apply for admission to the remaining 15% of un-reserved seats:
- i) All candidates defined under sub-regulation (C) of regulation-4
  - ii) Candidates who have resided in the State for total period of ten years excluding period of study outside the State or either of those parents have resided in the State for a total period of ten years excluding period of employment outside the State.

- iii) Candidates who are children of parents who are in the employment of this State or Central Government, Public Sector Corporation, Local Bodies, Universities and other similar quasi-Public Institutions in the State.
- iv) Candidates, who are spouses of those in employment of this State or Central Government, Public Sector Corporations, Local Bodies, Universities and Educational Institutions recognized by the Government or a University or other competent authority and similar other quasi Government Institutions within the State.
- v) Candidates, who are employed in the State Government undertakings, Public Sector Corporation, Local Bodies, Universities and other similar quasi-Public Institutions within the State.
- vi) Candidates who are spouses of the local candidates as per regulation -4(C)."

The State of Andhra Pradesh enacted the A.P. Educational Institutions (Regulation of Admissions and Prohibition of Capitation Fee) Act, 1983. In exercise of its rule making power conferred upon it thereunder, the State Government also framed the A.P. Medical College (Admissions into Post Graduate Medical Course) Rules, 1997. By reason of G.O.Ms. No.260 dated 10.7.1997 reservation to the extent 15%, 6% and 25% of the total number of seats was notified in each group of Degree and Diploma Courses in favour of Scheduled Castes, Scheduled Tribes and Backward Classes respectively, to the extent of 85% of the seats reserved in favour of the local candidates in relation to the local areas in terms of the Presidential Order. So far as 15%

of the balance seats are concerned, the same were made unreserved i.e. seats for open category candidates. The University of Health Sciences, Andhra Pradesh also made regulations for admission to Post Graduate Medical Courses in the Medical College in University of Health Sciences for the academic year 1997-98 in terms of the Presidential Order as also the 1997 Rules.

Pursuant to Presidential Order of 1974, the state of Andhra Pradesh was sub-divided into three local university areas, namely, (1) Osmania University; (2) Andhra University and (3) Sri Venkateshwara University. All these three university areas are situated in three different regions of the State envisaged under the Presidential Order.

A bare perusal of the definition of local area read with Paragraphs 3, 4 and 5 of the Presidential Order, as referred to herein before, it would be evident that 85% of the seats are reserved for local candidates in relation to local areas. So far as an university area is concerned, a local candidate in one particular university area would be a non-local one in another. The criteria for admission of a candidate in the super speciality courses in the university

on the ground of being local or non-local is, therefore directly referable to the university area and not the boundaries of the State of Andhra Pradesh.

It was not the case of the respondents that the Health University regulations framed by the state of Andhra Pradesh was violative of the Presidential Order, 1974 or Andhra Pradesh Medical Colleges (Admission into Post Graduate Medical Courses) Rules, 1997. It is further not in dispute that in terms of Rule 4 of the Andhra Pradesh Post Graduate Admission Rules read with the Health Regulations; 85% of the seats in each local areas are reserved for local candidates. It was not the contention of the respondents that admissions in the courses of studies had not been made on the basis of merit of the candidate in the entrance examination upon following the rules of reservations nor was it the contention of the respondents that the reservation made by the State to the extent of 46% in favour of the reserved classes was ultra vires Articles 15 and 16 of the Constitution of India. In the matter of admission, the Health University had followed the procedure provided in Annexure III of G.O.(P) No. 646 dated 10.7.1979 having regard to the fact that by reason of the Presidential Order, 1974 only 85% of the seats are reserved in favour of the local candidates which are required to be confined to the university area only. We, thus, do

not find any legal infirmity in the action of the appellants herein in directing that 15% reserved for candidates of non-local area may be filled up only on merit.

Article 371-D of the Constitution of India contains a special provision applicable to the State of Andhra Pradesh only. 54% of seats are required to be filled up from open categories and 46% of seats are to be filled up from the reserved category candidates in each of the three regions from the medical colleges and engineering colleges. Having regard to the reservations made region-wide, indisputably 85% of seats are to be filled up from amongst local candidates whereas only 15% of seats are to be filled up from amongst outside candidates.

Articles 15 and 16 of the Constitution of India provide for enabling provisions. By reason thereof the State would be entitled to either adopt a policy decision or make laws providing for reservations. How and in what manner the reservations should be made is a matter of policy decision of the State. Such a policy decision normally would not be open to challenge subject to its passing the test of reasonableness as also the requirements of

the Presidential Order made in terms of Article 371-D of the Constitution of India.

It is not in dispute that limited seats are available for admission in the super speciality courses. It may be true that normally the reservation has to be made for the entire State but in terms of Article 371-D of the Constitution of India reservation has to be made region-wise. The Seats have been reserved indisputably on total available seats in each discipline and those who come within the zone of consideration are considered for admission from amongst the reserved category candidates. Once it is found that reservation has been made for the reserved category candidates on the total number of seats available in each course; the High Court must be held to have committed a manifest error in issuing the impugned direction.

Having regard to the fact reservation has been provided to the extent of 46% of all the seats, the question of any further reservation i.e. for the remaining 15% of the seats would not arise.

The High Court keeping in view the decision of this Court in Indra Sawhney vs. Union of India and Ors. [1992 Supp (3) SCC 215] was bound

to proceed on the basis that the reservation cannot exceed 50%. In the said case it was held :

“Just as every power must be exercised reasonably and fairly, the power conferred by clause (4) of Article 16 should also be exercised in a fair manner and within reasonable limits-and what is more reasonable than to say that reservation under clause(4) shall not exceed 50% of the appointments or posts, barring certain extraordinary situations as explained hereinafter.

...

While 50% shall be the rule, it is necessary not to put out of consideration certain extraordinary situations inherent in the great diversity of this country and the people. It might happen that in farflung and remote areas the population inhabiting those areas might, on account of their being out of the mainstream of national life and in view of conditions peculiar to and characteristic to them, need to be treated in a different way, some relaxation in this strict rule may become imperative. In doing so, extreme caution is to be exercised and a special case made out.”

...

Reservation being extreme form of protective measure or affirmative action, it should be confined to minority of seats. Even though the Constitution does not lay down any specific bar but the constitutional philosophy being against proportional equality the principle of balancing equality ordains reservation, of any manner, not to exceed 50%.

(emphasis supplied)

In R.K. Sabharwal vs. State of Punjab [(1995) 2 SCC 745], this Court observed:

“When the State Government after doing the necessary exercise makes the reservation and provides the extent of percentage of posts to be reserved for the said Backward Class then the percentage has to be followed strictly. The prescribed percentage cannot be varied or changed simply because some of the members of the Backward Class have already been appointed/promoted against the general seats. As mentioned above the roster point which is reserved for a Backward Class has to be filled by way of appointment/promotion of the member of the said class. No general category candidate can be appointed against a slot in the roster which is reserved for the backward Class. The fact that considerable number of members of a Backward Class have been appointed/promoted against general seats in the State Services may be a relevant factor for the State Government to review the question of continuing reservation for the said class but so long as the instructions/rules providing certain percentage of reservations for the Backward Classes are operative the same have to be followed. Despite any number of appointees/promotees belonging to the Backward Classes against the general category posts the given percentage has to be provided in addition.”

Reservation is aimed at securing equal and protective discrimination.

Recently, the purpose of reservation although in a different context has been stated by this Court in A.I.L.M.S. Students Union vs. A.I.L.M.S [ 2002 (1) SCC 428]. It was observed:

“Reservation, as an exception, may be justified subject to discharging the burden of proving justification in favour of the class which must be educationally handicapped – the reservation geared up to getting over the handicap. The rationale of reservation in the case of medical students must be removal of regional or class inadequacy



or like disadvantage. Even there the quantum of reservation should not be excessive or societally injurious. The higher the level of the speciality the lesser the role of reservation.

...  
Any reservation, apart from being sustainable on the constitutional anvil, must also be reasonable to be permissible. In assessing the reasonability one of the factors to be taken into consideration would be whether the character and quantum of reservation would stall or accelerate achieving the ultimate goal of excellence enabling the National constantly rising to higher levels. In the era of globalisation, where the nation as a whole has to compete with other nations of the world so as to survive, excellence cannot be given an unreasonable go by and certainly not compromised in its entirety. Fundamental duties, though not enforceable by a writ of the Court, yet provide a valuable guide and aid to interpretation of Constitutional and legal issues. In case of doubt or choice, people's wish as manifested through Article 51-A can serve as a guide not only for resolving the issue but also for constructing or moulding the relief to be given by the Courts."

In Marri Chandra Sekhar Rao vs. Dean, Seth G.S. Medical College

& Ors. [1990 (3) SCC 130], it was held:

"Equality must become a living reality for the large masses of the people. Those who are unequal, in fact, cannot be treated by identical standards; that may be equality in law but it would certainly not be real equality. Existence of equality of opportunity depends not merely on the absence of disabilities but on presence of abilities. It is not simply a matter of legal equality. De jure equality must ultimately find its *raison d'être* in de facto equality. The State must, therefore, resort to compensatory State action for the purpose of making people who are factually unequal in their wealth.

education or social environment, equal in specified areas. It is necessary to take into account de facto inequalities which exist in the society and to take affirmative action by way of giving preference and reservation to the socially and economically disadvantaged persons or inflicting handicaps on those more advantageously placed, in order to bring about real equality."

The principle of fixing the percentage of reservation emanates from the doctrine of reasonableness. In Balaji vs. State of Mysore [1963 Supp. 1 SCR 439] this Court speaking through Gajendragadkar, J. struck down the Government Order impugned therein describing it as a fraud on the Constitution and the action of the executive was characterized as 'patently and plainly outside the limits of the Constitutional authority conferred on the State'.

In N.M. Thomas vs. State of Kerala AIR 1976 SC 490, it was held that reservation exceeding 49% had been permitted on the ground that SCs were not castes in a real sense and Article 16(4) was not an exception. Krishna Iyer, J. in Karmachari Sangh AIR 1981 SC 293, however, abandoned the aforementioned theory wherein his Lordship held that he was prepared to assume that they were castes and in any event Article 16(4) was an exception. In the said judgment, the final address of Dr. Ambedkar to the Constituent Assembly was dealt with in extenso.

Sri H.M. Seervai in his classic treatise on "Constitutional Law of India". Fourth Edition at page 611 states:

"But this passage gives an incorrect impression of Dr. Ambedkar's final address. He was not thinking of the SCs and STs or of the equality code as the following passage clearly shows:

I remember the days when politically minded Indians resented the expression 'the people of India'. They preferred the expression "The Indian nation". I am of the opinion that in believing that we are a nation we are cherishing a great delusion. How can people divided into several thousands of castes be a nation? The sooner we realize that we are not as yet a nation in the social and psychological sense of the word, the better for us. For, then only we shall realise the necessity of becoming a nation and seriously think of ways and means of realising the goal. The realisation of his goal is going to be very difficult-far more difficult than it has been in the United States. The United States has no caste problem. In India there are castes. The castes are anti-national. In the first place because they bring about separation in social life. They are anti-national also because they generate jealousy and antipathy between caste and caste. But we must overcome all these difficulties if we wish to become a nation in reality. For, fraternity can be a fact only when there is a nation. Without fraternity, equality and liberty will be no deeper than coats of paint."

The learned author states:

A service which lacks an esprit de corps, that is, consciousness of and pride in belonging to a particular service, lacks an element essential to an efficient and harmonious administration. To balance the claims of these

parties. in considering reservation quotas, requires critical analysis and calm deleberation; anger at the treatment meted out to classes to which one of the parties belongs does not help, for anger has been rightly likened "to a hasty servant who runs away before he has heard half the message".

Further it was opined:

"It is necessary to remember that in litigation there are more parties than one, that it is wrong to gratify the plaintiff to the detriment of the defendant, and that, while sympathy is a most commendable quality, it never appears in a less attractive guise than when it is practiced at the expense of somebody else.

If past injustice done to members of SCs and STs because of the accident of their birth calls for condemnation, so does injustice done to members of 'advanced classes' because of the accident of their birth. It may be that members of 'advanced classes' may have to bear for a time, as best as they can, the injustice done to them by reverse discrimination, if a long standing historical wrong has to be righted. But 40 years have gone by since our Constitution came into force: and every year that passes increases the individual's sense of injustice and injury. It is submitted that Judges who have to balance the claims of all the parties affected by any action under Article 16(4) ought to reflect that if the injustice of the past are to be strongly denounced now, then the future will denounce quite as strongly the injustices suffered by members of 'advanced classes' since 1950".

In *Indra Sawhney* (supra) it has been clearly held that the doctrine of principles of reservations have to be applied having regard to the vacancy

position as existing in the entire area, the only exception being the cases, which would be falling under Article 16(4).

In *K.Duraisamy & Anr. vs. State of T.N. & Ors.*, (2001) 2 SCC 538, this Court held:

“The mere use of the word ‘reservation’ per se does not have the consequence of ipso facto applying the entire mechanism underlying the constitutional concept of a protective reservation specially designed for the advancement of any socially-and-educationally-backward classes of citizens or for the Scheduled Castes and Scheduled Tribes, to enable them to enter and adequately represent in various fields. The meaning, content and purport of the expression will necessarily depend upon the purpose and object with which it is used.”

In the event, the ratio of the impugned judgement of the High Court is given effect to having regard to the limited number of seats available by providing reservation of an additional seat, principle of reservation to the extent is 50% would be violated. Furthermore, it is not for the High Court to say as to the efficacy or otherwise of the policy of the State as regard providing for reservation for the reserved category candidates and in that view of the matter the High Court, in our opinion must be held to have committed a manifest error in issuing the impugned directions, as a result whereof percentage of reservation would exceed 46%. Such a direction by the High Court is not contemplated in law.

The impugned direction of the High Court, therefore, cannot be sustained. It is set aside accordingly.

These appeals are allowed but in the facts and circumstances of the case, there shall be no order as to costs.

.....CJI

.....J.

[S.B. Sinha]

.....J.

[AR Lakshmanan]

New Delhi;  
10<sup>th</sup> March, 2003.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3985 OF 2001

( From the Judgment and Order dated 27.4.2001 of the Andhra Pradesh High Court in W.P.No. 17222 of 1988)

State of A.P.

..Appellant

v.

K.Purushotham Reddy and Ors.

..Respondents

( With C.A.No. 3986 of 2001 )

THE 10TH DAY OF MARCH, 2003

Present:

Hon'ble the Chief Justice

Hon'ble Mr.Justice S.B.Sinha

Hon'ble Dr.Justice AR. Lakshmanan

G.L.Sanghi, K.K.Venugopal, L.Nageswara Rao, Sr.Advs., T.V.Ratnam, K.Subba Rao, G.Ramakrishna Prasad, D.Ramakrishna Reddy, Ms.D.Bharathi Reddy, S.Muralidhar, Somiran Sharma, R.N.Poddar and J.K.Bhatia, Advs. with them for the appearing parties.

JUDGMENT

The following Judgment of the Court was delivered:





IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
CIVIL APPEAL NO. 3985 OF 2001

State of A.P.

...Appellant

Versus

K. Purushotham Reddy & Ors.

...Respondents

with

Civil Appeal No. 3986 of 2001

**JUDGMENT**

**S.B. SINHA, J :**

Whether the State of Andhra Pradesh had the legislative competence to enact Andhra Pradesh State Council of Higher Education Act, 1988 (Act 16 of 1988) (hereinafter called as "the 1988 Act") is the core question involved in these appeals which arise out of a judgment and order passed by the Andhra Pradesh High Court in Writ Petition No. 17222 of 1988.

The fact leading to filing of the Writ Petition by the respondent herein questioning the vires of the 1988 Act arose in the following circumstances:

The Central Government evolved a National Education Policy in the year 1986 pursuant whereeto and in furtherance whereof, recommendations were made for creating a State Level Planning for coordination of the Higher Education through Councils of Higher Education. Such Councils were proposed to be set up as statutory bodies having regard to the fact that there did not exist any effective machinery for planning and coordination of higher education at the State level vis-à-vis implementation of the programmes made by the University Grants Commission (UGC). With a view to give effect to the said policy, UGC constituted a committee to go into the said matter and make recommendations regarding setting up of the said Councils of higher education and programme of action to be taken in that behalf. The pressing need for constituting effective machinery for promotion and coordination of higher education at the State level and coordination of State level programmes with those of the UGC was felt and pursuant thereto and in furtherance thereof, UGC formulated guidelines for setting up of such Councils as recommended by the Committee.

In the year 1986 the State of Andhra Pradesh passed an Act known as the Andhra Pradesh Commissionerate of Higher Education Act, 1986 (hereinafter called as 'the Commissionerate Act'). The Commissionerate Act was enacted purported to be pursuant to or in furtherance of the recommendations of the Vice-Chancellors' Committee on higher education in the State of Andhra Pradesh. The constitutionality of the said Act inter alia was questioned on the ground of lack of legislative competence having regard to the parliamentary Act known as University Grants Commission Act enacted in terms of Entry 66, List I of the VII Schedule of the Constitution of India. The said writ petitions were filed by the respondent herein and four others as also the Osmania University Teachers' Association. The said writ petitions were dismissed by a Full Bench of Andhra Pradesh High Court by a judgment dated 24.03.1987. However, on an appeal thereagainst this Court in Osmania University Teachers' Association Vs. State of Andhra Pradesh and Another [(1987) 4 SCC 671] held that the State Legislature had no legislative competence therefor.

As a necessary fallout of the said decision, guidelines were sought to be reviewed wherefor request was made by the Government of India to the Commission.

In the light of the judgment, the Department of Education, Government of India requested the Commission to review the guidelines. Accordingly, the guidelines were reviewed with the help of the law panel of the Commission. The relevant extracts of the revised guidelines as approved by the Commission in January, 1988 are as under:

## “2.0 Setting up of the Council

In order to achieve the objectives set out above, the Central Government may advise State Governments for enacting legislation for setting up of State Councils of Higher Education in the States. In an Indian state where the number of universities are too few, an advisory body may be set up to fulfil the above objectives.

## 8.0 Powers and Functions of the Council

The Council shall function for coordination and determination of standards in institutions for higher education or research and scientific and technical institution in accordance with the guidelines issued by the UGC from time to time.

### 8.1 Planning and Coordination

- (i) To prepare consolidated programmes in the sphere of higher education in the State in accordance with the guidelines that may be issued by the UGC from time to time, and to assist in their implementation.

- (ii) To forward the development programmes of universities and colleges in the State to UGC along with its comments and recommendations.
- (iii) To assist UGC in respect of determination and maintenance of standards and suggest remedial action wherever necessary, in accordance with the guidelines.
- (iv) To evolve perspective plans for development of higher education in the State.
- (v) To monitor the progress of implementation of such development programmes.

#### 11.0 Annual Report

The Council shall prepare an Annual Report giving an account of its activities during the previous year and copies thereof shall be forwarded to the State Government and the Government shall cause the same to be laid before the Legislative Assembly. A copy of the Annual Report should be sent to University Grants Commission."

Pursuant to or in furtherance of the said recommendations revised guidelines as approved by the Commission were issued in January, 1988 and relying on or acting on the basis thereof the Government of Andhra Pradesh decided to fill up the gaps by constituting State Council of Higher Education as recommended in the National Education Policy of the Government of India as also in terms of the recommendations made by the Committee

constituted by the UGC. Consequently, the Government of Andhra Pradesh enacted Andhra Pradesh State Council of Higher Education Act, 1988.

On the same premise which led to the declaration of 1986 Act as ultra vires the Constitution, a Writ Petition came to be filed. It, by reason of the impugned judgment, was allowed by a Division Bench of the Andhra Pradesh High Court.

The correctness of the judgment of this Court in *Osmania University Teachers' Association* (supra) was doubted by a two-Judge Bench inter alia on the ground that the Commissionerate Act as also the 1988 Act dealt not only with higher education but also with intermediate education and having regard to the fact that Entry 66, List I of the VII Schedule of the Constitution of India does not deal with intermediate education, the entire Act could not have been struck down. It was further opined that many of the provisions of the 1986 Act as also the impugned Act would be covered by Entry 25, List III of the VII Schedule of the Constitution of India wherefor the State Legislature has the requisite legislative competence.

The primal question which, therefore, arises for consideration is as to whether the State of Andhra Pradesh has the requisite legislative competence to enact the 1988 Act.

It is not in dispute that after the decision of this Court in Osmania University Teachers' Association (supra) the Committee set up by the Commission went into the matter in great details and opined that the State Act should be in aid of the UGC Act and not in derogation thereof. Sufficient safeguards were provided as regards functioning of the Council so as to make the proposed enactment within the purview of Entry 25 of List III.

The task before this Court is, therefore, to see as to whether the defects pointed out by this Court in its earlier judgment had sufficiently been remedied so as to bring the same within the parameters of the Constitutional Scheme.

Before embarking upon a fuller discussion on the matter we may notice that the provisions of the 1988 Act are almost verbatim/ similar as

contained in the recommendations made by the Committee set up by the UGC.

This Court in Osmania University Teachers' Association (supra) compared the provisions of University Grants Commission Act as also the Commissionerate Act in details and came to the following conclusion:

"23. We have extracted only such of the provisions similar to those contained in the UGC Act. That is not all. The Commissionerate Act yet contains sweeping provisions encroaching on the autonomy of the Universities. Under Section 11(1)(c) it is for the Commissionerate to decide on the need for, and location of new colleges and courses of study including Engineering Colleges. Section 11(1)(f) provides power to the Commissionerate to establish and develop resources centers for curriculum materials and continuing education of teachers. Section 11(1)(g) confers power on the Commissionerate to co-ordinate the academic activities of various institutions of higher education in the State. It is also the duty of the Commissionerate to undertake examination reforms and assume accreditation functions [Section 11(1)(h) and (i)]. Section 11(1)(j) states that it is the duty of the Commissionerate to organise entrance test for University admission. Section 11(1)(k) states that it shall administer and grant scholarship and organise work study programmes. Section 11(1)(o) provides power to transfer teachers from one aided private college to another such college, subject to the rules made by the government. There is yet a devastating provision on the autonomy of Universities. Section



11(2) states that every University or college including the private college shall obtain the prior approval of the Commissionerate in regard to : (i) certain of new posts; (ii) financial management; and (iii) starting of new higher educational institutions. This 'Super Power' has been preserved to the Commissionerate notwithstanding anything contained in any law relating to Universities in the State, the Board of Intermediate Education Act, 1971 and the Andhra Pradesh Education Act, 1982."

(Emphasis supplied)

This Court found that the Commissionerate Act has practically taken over the academic programmes and activities of the universities as a result whereof the universities have been rendered irrelevant if not non-entities. It was opined that both the UGC Act and the Commissionerate Act deal with the same subject matter, namely, coordination and determination of excellence in the standards of teaching and examination in the universities conveying the same meaning.

This Court however observed:-

"28. Before parting with the case we may say a word more. The impugned Act was the result of a report from a High Power Committee constituted by the State Government. The Committee went into the affairs of the higher education in the State.

The Committee examined among other things, the curricula and courses of studies. The Committee found as a fact that there is no proper co-ordination and academic planning among the various bodies. It recommended to the State Government the need to pass a proper legislation to streamline the higher education. The State Government accepted the recommendations and passed the Act in question. The Act now disappears for want of legislative competence. What about the need to enact that Act? It will not vanish into thin air. The defects and deficiencies pointed out by the High Power Committee in regard to higher education may continue to remain to the detriment of the interest of the State and the Nation. Such defects in the higher education may not be an isolated future only in the State of Andhra Pradesh. It may be a common feature in some other States as well.

29. That apart, we often hear and read in newspapers with disgust about the question papers leakage and mass copying in the University examinations. It has stripped the university degrees of all its credibility. He indeed must be blind who does not see what is all happening in some of the Universities.

30. The Constitution of India vests Parliament with exclusive authority in regard to co-ordination and determination of standards in institutions for higher education. The Parliament has enacted the UGC Act for that purpose. The University Grants Commission has, therefore, a greater role to play in shaping the academic life of the country. It shall not falter or fail in its duty to maintain a high standard in the Universities. Democracy depends for its very life on a high standard of general, vocational and professional education. Dissemination of learning with search for new knowledge with discipline all round must be

maintained at all costs. It is hoped that University Grants Commission will duly discharge its responsibility to the Nation and play an increasing role to bring about the needed transformation in the academic life of the Universities.”

This exercise on the part of the Central Government and the UGC must have been undertaken in furtherance of the said observations.

The High Court in its impugned judgment compared the provisions of the Commissionerate Act and the impugned Act and came to the conclusion that even if the Act had been enacted in accordance with the guidelines issued by the UGC and pursuant to the recommendations made by the High Level Committee; as the State Government lacks the requisite legislative competence, it must necessarily be held to be ultra vires the Constitution.

Entry 66 of List I and Entry 25 of List III of VII Schedule of the Constitution of India read as follows:

“66. Coordination and determination of standards, in institutions, for higher education or research and scientific and technical institutions.

25. Education, including technical education, medical education and universities, subject to the

provisions of entries 63, 64, 65 and 66 List I; vocational and technical training of labour.”

The conflict in legislative competence of the Parliament and the State Legislatures having regard to Article 246 of the Constitution of India must be viewed in the light of the decisions of this Court which in no uncertain terms state that each Entry has to be interpreted in a broad manner. Both the parliamentary legislation as also the State legislation must be considered in such a manner so as to uphold both of them and only in a case where it is found that both cannot co-exist, the State Act may be declared ultra vires. Clause I of Article 246 of the Constitution of India does not provide for the competence of the Parliament or the State Legislatures as is ordinarily understood but merely provide for the respective legislative fields. Furthermore, the Courts should proceed to construe a statute with a view to uphold its constitutionality. [See ITC Ltd. Vs. Agricultural Produce Market Committee and others (2002) 9 SCC 232 : AIR 2002 SC 852. Asstt. Director of Inspection Investigation Vs. A.B. Shanthi etc. (2002) 6 SCC 259, Shri Krishna Gyanodav Sugar Ltd. & Anr. Vs. State of Bihar 2003 (2) SCALE 226 and Welfare Assocn. A.R.P., Maharashtra & Anr. Vs. Ranjit P. Gohil & Ors. 2003 (2) SCALE 238]

Entry 66 of List I provides for coordination and determination of standards inter alia for higher education. Entry 25 of List III deals with broader subject, namely, education. On a conjoint reading of both the entries there cannot be any doubt whatsoever that although the State has a wide legislative field to cover, the same is subject to entry 63, 64, 65 and 66 of List I. Once, thus, it is found that any State Legislation does not entrench upon the legislative field set apart by Entry 66, List I of the VII Schedule of the Constitution of India, the State Act cannot be invalidated.

Section 11 and Section 16 of the 1988 Act read thus:

“Sec. 11. Powers and functions of the Council:

(1) It shall be the general duty of the Council to co-ordinate and determine standards in institutions of Higher Education or Research and Scientific and Technical institutions in accordance with the guidelines issued by the University Grants Commission from time to time.

(2) The functions of the Council shall include:

I. Planning and Co-ordination:

- (i) to prepare consolidated programmes in the sphere of Higher Education in the State in accordance with the guidelines that may be issued by the University Grants Commission from time to time, and to assist in their implementation.

keeping in view the overall priorities and perspectives to Higher Education in the State.

- (ii) to assist the University Grants Commission in respect of determination and maintenance of standards and suggest remedial action of Higher Education in the State;
- (iii) to evolve perspective plans for development of Higher Education in the State;
- (iv) to forward the Developmental Programmes of Universities and Colleges in the State to the University Grants Commission along with its comments and recommendations;
- (v) to monitor the progress of implementation of such developmental programmes;
- (vi) To promote co-operation and co-ordination of educational institutions among themselves and explore the scope for interaction with industry and other related establishments.
- (vii) To formulate the principles as per the guidelines of the Government and to decide upon, approve and sanction new educational institutions by according permission keeping in view the various norms and requirements to be fulfilled;
- (viii) To suggest ways and means of meeting additional resources for higher education in the State.

II. Academic functions:-

xxx xxx xxx

III. Advisory functions:-

xxx xxx xxx

Sec. 16: Annual Report: The Council shall prepare once in every year, in such form and at such time as may be prescribed an annual report giving a true and full account of its activities during the previous year, and copies thereof shall be forwarded to the Government and the Government shall cause the same to be laid before the Legislative Assembly of the State. A copy of the report shall also be sent to University Grants Commission."

A bare comparison of the provisions of the 1988 Act with the provisions of the Commissionerate Act would clearly demonstrate that the powers and functions of the Council stand curtailed in so far as they are not only to function in accordance with the guidelines issued by the University Grants Commission but its duty is to assist the Commission in respect of determination and maintenance of standards and suggest remedial action of Higher Education in the State. In exercise of the power conferred upon it under the 1988 Act, the Council can now only forward the programmes of universities and colleges in the State to the University Grants Commission along with its comments and recommendations which necessarily would be

subject to the latter's acceptance. Even an Annual Report prepared by the Council although is required to be forwarded to the Government which in turn is enjoined with a duty to place before the Legislative Assembly of the State, but a further requirement has been provided that a copy thereof shall also be sent to the University Grants Commission. Evidently the Commission on receipt of a copy of the report may give its own suggestions for their implementation by the Council. It is, therefore, not correct to contend as has been done by the High Court in its impugned judgment that the Council also derives its power to coordinate and determine the standards of institutions of higher education or research and technical institutions including planning and coordination to prepare consolidated programmes in the sphere of higher education in the State keeping in view the overall priorities and perspectives of higher education. Although the High Court has noticed that the principal duties and functions of the Council is to assist the UGC in respect of determination and maintenance of standards and suggest remedial action: to evolve the developmental programmes of Universities and Colleges in the State to the UGC along with its comments and recommendations to monitor the progress of implementation of such developmental programmes: to promote cooperation and coordination of educational institutions among themselves and to explore the scope for



interaction with industry and other related establishments which not only had been done in accordance with the guidelines issued by the UGC from time to time. Despite the same it was held:

“On a comparative study of the provisions of the Act 26 of 1986 and Act 16 of 1988, the functions of the Commissionerate and the functions of the State Council well nigh are the same except to the extent of stating that the Council should act in accordance with the guidelines issued by the UGC from time to time.”

Once it is held that the duties and functions of the Councils are compartmentalised and they have to act in accordance with the guidelines issued by the UGC from time to time, it is preposterous to suggest that the Council acts on its own and/or at the instance of the Government in the field of cooperation and determination of standards in institutions of higher education as an independent body. Keeping in view the fact that the Commission itself on the request of the Central Government constituted a committee and laid down the parameters within which the Council can function and subjected themselves to the restriction of working within the guidelines issued by the UGC, we fail to understand as to how it can be contended that both the Commissionerate Act as also the Council Act provide for same powers and functions. The modifications made in the 1988

Act vis-à-vis the Commissionerate Act cannot be said to be so slight as has been opined by the High Court so as to arrive at a conclusion that the 1988 Act still suffers from the same vices. Having regard to the provisions of the 1988 Act and particularly Section 11 thereof we have no doubt in our mind that the purpose of the said Act, and the powers and functions thereof vis-à-vis the Commissionerate Act are absolutely distinct and different. In no way the 1988 Act can be said to have an upper hand over the UGC Act.

It is not a case where the State Council of Higher Education were to act independently irrespective of the standard of education set forth by the University Grants Commission. Its powers and functions, as indicated hereinbefore, are absolutely different from that of 1986 Act.

In R. Chitralekha Vs. State of Mysore [(1964) 6 SCR 368] Subba Rao, J. categorically held that the question as regard the impact of the Entry 66, List I and Entry 25, List III must be determined by reading the Central Act as well as the State Act conjointly. A state law providing for such standards having regard to Entry 66 of List I would be struck down as unconstitutional only in the event the same is found so heavy or devastating so as to wipe out or appreciably abridge the central field and not otherwise. Once the powers and functions of the Council is found to be subject to the guidelines issued

by the UGC and the perspective plan prepared by it would be subject to its approval, the question of standard of education set up by the State Act cannot be said to be leading to wipe out or appreciably abridge the central field.

The 1988 Act expressly states that the same would be subject to the Central Act. It emphasizes that the provisions thereof are for the purpose of filling up of the gaps and to control effectively a large number of universities within which, having regard to their sheer number, the UGC itself would not be in a position to have effectively control over them. If the UGC has an overall control over the State Council, the Central field is not entrenched upon. In a situation of this nature the doctrine of pith and substance must also be held to be applicable. We must also take notice of the fact that the State of Tamil Nadu as also the State of West Bengal in terms of the National Education Policy, 1986 as also the recommendations of the Committee framed by the University Grants Commission enacted similar Acts.

The provisions of the impugned Act would clearly show that the State Act is in aid of the Parliamentary Act and it does not in any manner whatsoever entrench thereupon.

A similar question came up for consideration in Naga People's Movement of Human Rights Vs. Union of India [(1998) 2 SCC 109] wherein the law has been laid down in the following terms:

"65. ... The contention of Shri Goswami that the provisions of Sections 4 and 5 of the State Act are inconsistent with the provisions of Arms Act enacted by Parliament also cannot be accepted because the said provisions only provide for effective enforcement of the provisions of the Arms Act in the disturbed areas and it cannot be said that they, in any way, encroach upon the field covered by the Arms Act. The challenge to the validity of Sections 4 and 5 of the State Act is, therefore, negatived."

Yet again in Dr. Preeti Srivastava and Another Vs. State of M.P. and Others (1999) 7 SCC 120, this Court held thus

"35. The legislative competence of Parliament and the legislatures of the States to make laws under Article 246 is regulated by the VIIth Schedule to the Constitution. In the VIIth Schedule as originally in force, Entry 11 of List II gave to the State an exclusive power to legislate on

"education including universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I and Entry 25 of List III".

Entry 11 of List II was deleted and Entry 25 of List III was amended with effect from 3-1-1976 as a result of the Constitution 42nd Amendment Act of

1976. The present Entry 25 in the Concurrent List is as follows :

"25. Education, including technical education, medical education and universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I; vocational and technical training of labour."

Entry 25 is subject, inter alia, to Entry 66 of List I. Entry 66 of List I is as follows :

"66. Coordination and determination of standards in institutions for higher education or research and scientific and technical institutions."

Both the Union as well as the States have the power to legislate on education including medical education, subject, inter alia, to Entry 66 of List I which deals with laying down standards in institutions for higher education or research and scientific and technical institutions as also coordination of such standards. A State has, therefore, the right to control education including medical education so long as the field is not occupied by any Union legislation. Secondly, the State cannot, while controlling education in the State, impinge on standards in institutions for higher education. Because this is exclusively within the purview of the Union Government. Therefore, while prescribing the criteria for admission to the institutions for higher education including higher medical education, the State cannot adversely affect the standards laid down by the Union of India under Entry 66 of List I. Secondly, while considering the cases on the subject it is also necessary to remember that from 1977, education, including, inter alia, medical and university education, is now in the Concurrent List so that the Union can legislate on admission criteria also. If it does so, the State will not be able

to legislate in this field, except as provided in Article 254.”

[See also State of Harvana & Anr. Vs. Chanan Mal etc. {(1976) 3 SCR 688, In re Hindu Women's Rights to Property Act {(28) AIR 1941 FC 72} and R.M.D. Chamabraugwalla Vs. the Union of India {(1957) SCR 930}]

In Public Service Tribunal Bar Association Vs. State of U.P. and another (2003 AIR SCW 653), a bench of which one of us (Hon'ble CJI) was a member, it has been held:

“28.....Judicial system has an important role to play in our body politic and has a solemn obligation to fulfil. In such circumstances it is imperative upon the Courts while examining the scope of legislative action to be conscious to start with the presumption regarding the constitutional validity of the legislation. The burden of proof is upon the shoulders of the incumbent who challenges it. It is true that it is the duty of the constitutional Courts under our Constitution to declare a law enacted by the Parliament or the State Legislature as unconstitutional when the Parliament or State Legislature had assumed to enact a law which is void, either from want of constitutional power to enact it or because the constitutional forms or conditions have not been observed or where the law infringes the fundamental rights enshrined and guaranteed in Part III of the Constitution.”

Submission of Mr. D. Ramakrishna Reddy, the learned counsel appearing on behalf of the respondent to the effect that the 1988 Act is a colourable piece of legislation is stated to be rejected. As noticed hereinbefore the State Act seeks to plug the loopholes pointed out by this Court in Osmania University Teachers' Association (supra). It seeks to bring the State Act in conformity with the constitutional parameters. Reliance placed by Mr. Reddy on State of T.N. and Another Vs. Adhivaman Educational & Research Institute and Others (1995) 4 SCC 104 is equally misplaced. Therein it was found that the Tamil Nadu Private Colleges (Regulation) Act and Rules framed thereunder as also the Madras University Act entrenches upon provisions of All Indian Council for Technical Education Act, 1987 and in that situation it was held:

"30. A comparison of the Central Act and the University Act will show that as far as the institutions imparting technical education are concerned, there is a conflict between and overlapping of the functions of the council and the University. Under Section 10 of the Central Act, it is the Council which is entrusted with the power, particularly, to allocate and disburse grants, to evolve suitable performance appraisal systems incorporating norms and mechanisms for maintaining accountability of the technical institutions, laying down norms and standards for courses, curricula, staff pattern, staff qualifications, assessment and examinations, fixing

norms and guidelines for charging tuition fee and other fees, granting approval for starting new technical institutions or introducing new courses or programmes, to lay down norms or granting autonomy to technical institutions, providing guidelines for admission of students, inspecting or causing to inspect colleges, for withholding or discontinuing of grants in respect of courses and programmes, declaring institutions at various levels and types fit to receive grants, advising the Commission constituted under the Act for declaring technical educational institutions as deemed universities, setting up of National Board of Accreditation to periodically conduct evaluation on the basis of guidelines and standards specified and to make recommendations to it or to the Council or the Commission or other bodies under the Act regarding recognition or de-recognition of the institution or the programme conducted by it. Thus, so far as these matters are concerned, in the case of the institutes imparting technical education, it is not the University Act and the University but it is the Central Act and the Council created under it which will have the jurisdiction. To that extent, after the coming into operation of the Central Act, the provisions of the University Act will be deemed to have become unenforceable in case of technical colleges like the engineering colleges. As has been pointed out earlier, the Central Act has been enacted by Parliament under Entry 66 of list I to coordinate and determine the standards of technical institutions as well as under Entry 25 of List III. The provisions of the University Act regarding affiliation of technical colleges like the engineering colleges and the conditions for grant and continuation of such affiliation by the University shall, however, remain operative but the condictions that are prescribed by the University for grant and continuance of affiliation will have to be in conformity with the norms and guidelines



prescribed by the Council in respect of matters entrusted to it under Section 10 of the Central Act."

The said decision *ex facie* is not applicable in the instant case. The law was laid down therein in the following terms:

"41. What emerges from the above discussion is as follows :

(i) The expression 'coordination' used in Entry 66 of the Union List of the Seventh Schedule to the Constitution does not merely mean evaluation. It means harmonisation with a view to forge a uniform pattern for a concerted action according to a certain design, scheme or plan of development. It, therefore, includes action not only for removal of disparities in standards but also for preventing the occurrence of such disparities. It would, therefore, also include power to do all things which are necessary to prevent what would make 'coordination' either impossible or difficult. This power is absolute and unconditional and in the absence of any valid compelling reasons, it must be given its full effect according to its plain and express intention.

(ii) To the extent that the State legislation is in conflict with the Central legislation though the former is purported to have been made under Entry 25 of the Concurrent List but in effect encroaches upon legislation including subordinate legislation made by the Centre under Entry 25 of the Concurrent List or to give effect to Entry 66 of the Union List, it would be void and inoperative.

(iii) If there is a conflict between the two legislations, unless the State legislation is saved by the provisions of the main part of clause (2) of Article 254, the State legislation being repugnant to the Central legislation, the same would be inoperative.

(iv) Whether the State law encroaches upon Entry 66 of the Union List or is repugnant to the law made by the Centre under Entry 25 of the Concurrent List, will have to be determined by the examination of the two laws and will depend upon the facts of each case.

(v) When there are more applicants than the available situations: seats, the State authority is not prevented from laying down high standards or qualifications than those laid down by the Centre or the Central Authority to short-list the applicants. When the State authority does so, it does not encroach upon Entry 6 of the Union List or make a law which is repugnant to the Central law.

(vi) However, when the situations: seats are available and the State authorities deny an applicant the same on the ground that the applicant is not qualified according to its standards or qualifications, as the case may be, although the applicant satisfies the standards or qualifications laid down by the Central law, they act unconstitutionally. So also when the State authorities de-recognise or disaffiliate an institution for not satisfying the standards or requirements laid down by them, although it satisfied the norms and requirements laid down by the Central authority, the State authorities act illegally."

Thus, there cannot be any doubt whatsoever that only to the extent of conflict, the State law has to be struck down and not otherwise.

Before parting with this case, it is relevant to notice that the respondent herein is merely a teacher of a university. It is true that he was one of the petitioners in the earlier writ petition also questioning the validity of the Commissionerate Act. Both the Central Government as well as the University Grants Commission in no uncertain terms stated before us that the Act is *intra vires*, presumably, because they do not find any conflict between the University Grants Commission Act and the 1988 Act.

At one point of time a question arose as to whether having regard to the observations made by the Division Bench, the matter should be referred to a Constitution Bench. We do not think so to do inasmuch as the question which falls for consideration is not as to whether the decision of this Court in *Osmania University* is correct or not but really is as to whether the impugned Act in its present form is in any way in conflict with the Central Act having regard to the changes effected therein pursuant to the recommendations of the Committee constituted by the UGC at the instance of the Central Government.

We are further of the view that the High Court committed a manifest error in striking down the entire Act without bestowing its consideration to the fact that the State Act deals with not only higher education but also intermediate education which in no manner deals with the subject matter of Entry 66 of List I of VII Schedule of the Constitution of India. We are of the view that the impugned enactment does not encroach upon the legislation enacted by the Parliament and the same is a valid piece of legislation.

For the reasons aforementioned, the impugned judgment cannot be sustained which is set aside accordingly. These appeals are allowed. In the facts and circumstances of this case, however, there shall be no order as to costs.

.....CJI

.....J.  
[S.B. Sinha]

.....J.  
[AR. Lakshmanan]

New Delhi;  
March 10, 2003.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 2309-2310 OF 2003

( From the Judgment and Order dated 28.8.2002 of the Chennai High Court in  
W.A.Nos. 1736 and 1737 of 2002)

Secretary, Selection Committee (MBBS)

..Appellant

v.

N. Anirudhan (Minor) and Ors. etc.

..Respondents

THE 12TH DAY OF MARCH, 2003

Present:

Hon'ble Mr.Justice Shivaraj V.Patil

Hon'ble Mr.Justice Arijit Pasayat

R.Venkataramani. Sr.Adv. and P.N.Ramalingam. Adv., with him for the  
Appellant.

M.Vijay an. Sr.Adv. and K.V.Mohan. Adv. with him for the Respondents

JUDGMENT

The following Judgment of the Court was delivered:



IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
CIVIL APPEAL NOS. 2369-2310 OF 2002  
(Arising out of SLP (C) Nos. 19429-19430/2002)

Secretary, Selection Committee (MBBS)

..Appellant

Versus

M. Anirudhan (minor) and Ors. etc.

..Respondents

J U D G M E N T

BRIGID BANAYAJI

Leave granted.

Challenge in these appeals is to the directions given by a learned single Judge undisturbed by the Division Bench of the Madras High Court in Writ Appeal Nos. 1736 and 1737 of 2001.

Factual scenario which is almost undisputed and leading to the appeals is as follows:

The respondents were admitted to the MBBS degree course. They claimed that they should have been given

admission in the Government College category in respect of the seats created pursuant to the directions given by this Court, for creating additional seats for the open category. They filed writ petitions before the High Court contending that some students who had secured lesser marks than them had been admitted in the Government College category.

The Tamil Nadu Backward Classes, Scheduled Castes and Scheduled Tribes (Reservation of seats in educational Institutions and of appointment or posts in services under the State) Act, 1993 (hereinafter referred to as the 'Act') was enacted by the State of Tamil Nadu. Prior to its enactment, the ratio of admission was as follows:

Open category	50%
BC/MBC	31%
SC	18%
ST	1%

After enactment of the Act, the communal reservation to be followed in the admissions was 31% to open competition candidates, while the rests 69% was allotted to BC, MBC, SC and ST candidates. Constitutional validity of the provisions of the said Act was challenged before this Court in SLP (C) No. 13526/1993. Pending final orders, an interim order was passed on 14.8.1994. Essence of the order is being followed for various academic years.



The writ petitioners contended that they had secured 292.54 and 292.43 out off marks. They were selected and allotted to Perundurai Medical College under free seat category by following the 69% reservation rule. Certain additional seats were created pursuant to the directions given by this Court. But admission was given to two candidates who are 2<sup>nd</sup> and 3<sup>rd</sup> respondents in the writ petitions respectively belonging to the backward classes category, though they secured 292.08 out off marks. They were allotted to Madurai and Coimbatore Government Medical Colleges respectively.

Grievance of the writ petitioners was that they were entitled to be allotted to the seats in Government Medical Colleges and not the 2<sup>nd</sup> and 3<sup>rd</sup> respondents in the writ petitions. This prayer was rejected by the State Government on the ground that because of the directions of this Court, there was a re-fixation of the cut off marks. The cut off marks for the open category candidates stood lowered to 293.18 from 294.52. Since writ petitioners had secured lesser marks, they were not entitled to be admitted.

Learned Single Judge of the High Court directed that on the factual position as highlighted by the parties, the writ petitioners were entitled to be admitted to the allotment in Government seats in Government Medical Colleges. However,

the allotment to the 2<sup>nd</sup> and 3<sup>rd</sup> respondents in the writ petitions was not disturbed. The order passed by learned Single Judge came to be challenged before the Division Bench which by the impugned order was dismissed. It was noticed that the learned Single Judge had passed an order on the basis of the directions given by this Court and had given valid reasons for allowing the writ petitions.

Learned counsel appearing for the appellant submitted that the approach of the High Court was erroneous. The order passed by this Court on 18.8.1994 clearly indicated the position as regards the number of seats to be allotted to various categories. The seats were filled up by the concerned authorities strictly complying with the directions of this Court. It is further submitted that by giving admission to the writ petitioners virtually new seats have to be created for them which will be against the law laid down by this Court in Medical Council of India v. Madhu Singh and Ors. (2002 (7) SCC 258).

Per contra, learned counsel for the respondents-writ petitioners submitted that the data furnished by the appellant clearly indicate as to how misleading information is being given. According to him, the data clearly indicates that directions of this Court have not been complied with.

In Voice (Consumer Care) Council v. State of Tamil Nadu

(1994 (11) SCC 740) this court indicated the purport of the order dated 18.3.1994 which is as follows:

"First, make the admissions applying the rule of 69% reservation in favour of Backward Classes, Scheduled Castes and Scheduled Tribes. Second, the additional seats created by virtue of the orders of this court be filled with the general category candidates. The number of seats so created was equal to the number of seats which the general candidates would have got if the rule of fifty per cent total reservation had been applied..

This order in effect respected the rule of 69 per cent devised by the Government of Tamil Nadu - and sanctioned by the Tamil Nadu Act 48 of 1994 - while, at the same time, removing the grievance of the general category candidates by creating additional seats for them for that year. In other words, the sanctioned strength of seats in every college are being allotted exclusively in accordance with the sixty-nine per cent reservation rule. Only the additional seats, which are created by and only because of the orders of this Court are being provided to general category candidates on the basis of merit, which category includes Backward Classes, Scheduled Castes and Scheduled Tribes as well. It is significant to notice in this connection that according to the figures supplied by the Government of Tamil Nadu for the Academic years 1993-94 and 1994-95, more than eighty per cent of the seats in the general category are being taken away by the students belonging to Backward Classes on the basis of their own merit. As fully explained and illustrated in the order dated 18.3.1994, the students belonging to Backward Classes are getting fifty per cent of the total seats on the basis of reservation and more than 80 per cent of the seats in the general category (open competition category) on the basis of their own merit. There is no reason to believe that the situation is different this year. Thus, the bulk of the additional seats directed to be created by

this Court year after year (since 1994-95) are again going to students belonging to Backward Classes. The order of this Court is thus not only upholding the rule of fifty per cent ceiling on reservation affirmed by the Special Bench of this Court in Indra Sawhney v. Union of India (1992 Supp (3) SCC 217) but is in truth operating to the advantage and benefit of a number of Backward Class students. Many of the Backward Class students, along with certain other candidates belonging to non-reserved categories, who would not have otherwise got admission into these courses, are getting seats by virtue of these orders. And yet it is surprising to note that the Government of Tamil Nadu has chosen to ask for modification of the order dated 22.7.1996. The said order is only interlocutory in nature. Pending decision of the several constitutional and legal questions raised in these matters, it was supposed to be an equitable order harming no one. If at all, it benefited some who would not have been able to obtain admission otherwise and surely that fact cannot be a ground of grievance for the State of Tamil Nadu. Only as an interim measure, certain additional seats are being created and they are being allotted to general category candidates - which in Tamil Nadu really means providing the bulk of them to students belonging to Backward Classes."

It has been rightly submitted by the learned counsel for the appellant that there is no scope for any increase of seats without specific permission from the concerned authorities as was held in MCI's case. The directions given by this Court, as extracted above, are clear and unambiguous. The only controversy is whether there has been proper implementation of the order. We find that learned Single Judge and the Division Bench have categorically noted that persons belonging to open category who had secured lesser marks than the writ petitioners, were admitted to the

Government Medical Colleges. From the data furnished, we find that there were several absentees from amongst those selected in the open category in relation to the Government Medical Colleges. Additionally, two seats were directed to be kept vacant by learned Single Judge which position continued on confirmation of the Learned Single Judge's order by the Division Bench.

In the peculiar circumstances without elaborate deliberations of the controversy involved in the main case which is pending before this Court, it would be appropriate if the writ petitioners (respondents in the present appeals) are admitted in the Government Medical Colleges. Obviously, this direction would not amount to creation of additional seats and has to be done within the sanctioned seats strength of the concerned Government College. As noted above, there were several absentees and the interim order passed by the learned Single Judge continued to be operative on confirmation by the Division Bench as the writ petitions were decided in favour of the writ petitioners. Let the necessary steps be taken to admit the writ petitioners (respondents in the present appeals) within three weeks from today. Such admission shall be without prejudice to the claims involved in the main petition pending before this Court. We make it clear that we have not made any departure from principles as laid down in Mulla's case (supra) and have

passed this order taking note of the undisputed factual position of the case.

The appeals are accordingly disposed of.

.....J.  
(SHIVARAJ V. PATIL)

.....J.  
(ARIJIT PASAYAT)

New Delhi,  
March 12, 2003

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4167 OF 2003

(From the Judgment and Order dated 7.9.2001 of the Himachal Pradesh High Court in C.W.P.No. 24 of 2001)

I.I.T. College of Engineering

..Appellant

v.

State of H.P. and Ors.

..Respondents

THE 8TH DAY OF AUGUST, 2003

Present:

Hon'ble Mr.Justice K.G. Balakrishnan

Hon'ble Mr.Justice P.Venkatarama Reddi

A.M.Singhvi, Sr.Adv., B.K.Sinha, A.Bhandari, Manoj Kumar,  
B.K.Satija, J.S.Attri, C.Badri Nath Babu, Bimal Roy Jad, Maninder  
Singh, Mrs.P.M.Singh, Ankur Talwar, Kriti Maan Singh,Advs. with  
him for the Appearing parties

JUDGMENT

The following Judgment of the Court was delivered:

\*CP\*





IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 4167 OF 2003

I.I.T.T. College of Engineering

.. Appellant

Versus

State of H.P. & Ors.

.. Respondents

J U D G M E N T

K.G. BALAKRISHNAN, J.

Leave granted.

Heard the learned counsel for the appellant and respondents 1 to 4.

This appeal is preferred by I.I.T.T. College of Engineering represented through its Officiating Chairman. The Engineering College was started by a Society, by name, International Institute of Telecom Technology Society, Kala Amb, registered under the Societies Registration Act. The Society established the Engineering College at Sirmour District in the State of Himachal Pradesh after obtaining initial permission from All India Council for Technical Education (for short AICTE) in 1997 and 'no objection' certificate from the University and

started four year degree courses in Electrical Engineering, Electronics & Communication Engineering and Computer Science & Engineering, with a maximum intake of 40 students in each discipline. The College sought permission to start a Degree course in Information Technology and extension of approval for the session 1998-99. For this purpose, an expert Team of AICTE visited the institution, on 28.3.1998. AICTE extended its approval on 31.7.1998 for the academic session 1998-99 with an intake of 140 students. The AICTE (4<sup>th</sup> respondent herein), however, did not accord its approval to the additional courses in Information Technology and Electronics and Instrumentation for the session 1998-99. The college again applied for extension of approval for the session 1999-2000 with a request for increasing intake and starting additional courses. The Expert Committee visited the institution on 16.2.1999 and recommended Information Technology as additional course with intake of 40. After considering the said report, the AICTE had accorded approval through its communication dated 27.7.1999 for the intake of 200 students including 40 in the additional course of Information Technology subject to fulfillment of norms and the conditions stipulated by the Council. However, the H.P. University, which had also sent its team for inspection in April, 1999, declined to grant its approval and affiliation for the I.T. Course. The University had also issued a press note on 12.8.1999 warning the students seeking admission to the said course. However, the students were admitted by the appellant-college on the basis of the approval granted by AICTE.

The question of extension of approval for the session 2000-2001 was again considered by AICTE in the light of the inspection reports of the Expert Committee. The AICTE, by its letter dated 24.7.2000, communicated the extension of approval with reduced intake of 160 subject to the conditions specified in Annexure-I. No approval was given for the Information Technology Course. In Annexure-I to the said letter, it was made clear that the permission for starting I.T. was withdrawn since the college had not made any attempt to provide proper infrastructure for this course. Moreover, the College Management was warned that the admissions to the existing three courses will be stopped from the next year if the deficiencies pointed out therein continued. By its communication dated 17.7.2000, the Registrar of the University advised the appellant-college to delete the IT course from the Prospectus for the academic session 2000-2001 and to issue a public notice to that effect. Faced with these two adverse communications from AICTE and University, the appellant filed a Writ Petition (C.W.P. No. 4104 of 2000) in Delhi High Court. The High Court stayed that part of the order dated 24.7.2000 deleting the seats in IT Course. The University by its letter dated 1.12.2000 informed the appellant-college that the admission/examination forms sent by the college for holding the first semester examination in I.T. were returned. The University made it clear by its further communication dated 4.12.2000 that no student who was admitted to I.T. course shall be allowed to appear in the first semester examination in the absence of affiliation from the University. At this stage, it appears that the college had

submitted an application for grant of affiliation for the course of I.T. on 11.12.2000. However, the application was returned by the University as it did not fulfill the necessary requirements. The appellant then challenged the decision of the University by filing CWP No. 956 of 2000 in Himachal Pradesh High Court. The same was dismissed as withdrawn on 4.1.2001. While so, on 27.3.2001, the Division Bench of High Court of Delhi, while admitting LPA No. 461 of 2000 filed by the State of Himachal Pradesh and H.P. University against the interim order granted on 28.7.2000, permitted the admitted I.T. students to take the examination while making it clear that no special equity will be created in their favour and it will be subject to the ultimate decision. The S.L.P. filed by the State against that order was dismissed. Surprisingly, the AICTE by its communication dated 14.6.2001, accorded approval for the academic year 2001-2002 for all the courses including IT which was withdrawn earlier, subject to the fulfillment of three conditions regarding library, physics and chemistry lab and senior faculty. However, the University suspended the affiliation granted to the college initially and directed the College Management not to make fresh admissions from the session 2001-2002.

In the meanwhile, five students of the Information Technology course filed Writ Petition No. 24 of 2001 in Himachal Pradesh High Court out of which the present appeal arises. Inter alia, they sought for directions to accord affiliation, to direct AICTE to take appropriate steps to safeguard interests of the students and to direct the College Management to comply with the directions issued by the

University and AICTE. A prayer was also made that till the College Management takes steps to comply with the directions of the concerned authorities, the management and administration of the college should be taken over by a senior official-cum-administrator who shall also conduct an inquiry against the management of the college.

The High Court took the view that the approval by AICTE does not result in automatic affiliation by the university and the affiliation fell within the exclusive power of the university. As there was no affiliation or approval from the University to run the IT course, the action of the University authorities in not allowing the IT students to appear for the examination cannot be faulted. The High Court, based on the report given by the AICTE on the basis of inspection conducted on 16.8.2001 i.e., during the pendency of the writ petition, observed that the College did not possess the minimum required infrastructure as per the norms of AICTE and the college failed to comply with the conditions subject to which the approval was accorded by AICTE. The High Court also referred to the affidavit filed by the Member Secretary-cum-Officiating Chairman of AICTE, in which he stated that the college lacked basic infrastructure not only for the course of IT, but also other courses. He further stated that the Council had decided to keep the admission of fresh batch of students for the session 2001-2002 in abeyance. The High Court then observed: "The Member-Secretary probably realized albeit belatedly, that the stand taken on behalf of AICTE earlier was not befitting a responsible

Council. He, therefore, tried to be rather objective and frankly admitted that the grievance of the State Authorities and University had substance."

Having commented adversely on the manner in which the college was being run and the litigative zeal of the College Management, the High Court considered it just and proper to issue certain directions in the interests of the student community and for better administration. The substance of directions are as follows:

1. The AICTE should take an appropriate decision keeping in view the statutory provisions and various communications and reports forming part of the record.
2. Director of Technical Education, Vocational and Industrial Training, Himachal Pradesh should act as Administrator for the college and temporarily takeover the management and administration of the college and initiate steps for obtaining affiliation/extension of affiliation from the University for IT course of B.Tech.
3. He shall also comply with the relevant rules and regulations and do everything necessary to safeguard the future of the petitioners and other students. In particular, the Administrator in collaboration with respondent Nos.1-4 should take necessary steps to ensure that the students in IT, if otherwise eligible, should be adjusted in other Engineering colleges.

Thus, the writ petition was partly allowed with heavy costs.

Pursuant to this order, the Director of Technical Education nominated the Joint Director of Technical Education to look after the affairs of the college. The said official is now functioning under the overall control of the Administrator. The entire management and control is now with the Administrator. Steps were taken to see that the students of IT course were allocated seats in other colleges in adjoining States. The IT course has been discontinued at present.

The counter affidavit filed by the Additional Secretary (TE) gives an elaborate account of various steps taken by the Administrator to set right the mal-administration, the improvement of facilities and service conditions of staff and the refund of security deposit amount to a substantial extent. It is also stated that some of the deficiencies pointed out by the Committee constituted under the directions of this Court have been rectified and in due course of time, other steps will also be taken in the light of the financial position. It is also averred in the counter affidavit that because of various improvements made by the Administrator, AICTE and H.P. University gave approval for the year 2002-2003 to run the courses (other than IT). For granting approval for the ensuing year, the AICTE team already inspected the college.

The inspection committee constituted as per the interim order of this Court focused its attention on seven aspects, namely, space, laboratories, staff, library, facilities like hostel, games etc., interaction with students and financial discipline. The committee commented that the infrastructure, laboratories and equipment

were deficient in many respects and the salary and other conditions of service were not satisfactory. However, the committee reported certain improvements and works in progress after the takeover of the management by Administrator. In the course of interaction with students, it was noticed that there was marked positive change in many respects and hostel life was more satisfying and secure.

The learned senior counsel appearing for the petitioner was strident in his criticism of the reports furnished by the inspection team of AICTE during the pendency of the writ petition and the latest inspection report submitted by a committee headed by Director, IIT during the pendency of this SLP. It is his contention that the former report and the volte face adopted by AICTE in its subsequent affidavit in the High Court was the result of unwarranted intervention by the High Court and that the inspection was slipshod lasting only for a few minutes. It is submitted that the material facts noted in the two inspection reports are opposed to the ground realities and the approach was not fair. Certain photographs were produced in support of his contention. It is pointed out that the previous reports of AICTE were not referred to by the two inspection teams and there was no specific reference to the 'norms of AICTE' which are not satisfied. The learned counsel repeatedly emphasized that the infrastructural facilities and the establishment the appellant has are far superior to many other colleges for which the affiliation/approval was granted and if reasonable time was granted, the defects could have been rectified. The learned senior counsel also made it clear that at present the appellant is not interested in starting the IT course



having regard to various developments that have taken place and it would make a fresh approach to the AICTE and University as and when it intends to restart the course. Above all, the learned counsel submitted that the direction of the High Court appointing an Administrator and taking over the management is without authority of law and even opposed to the concept of autonomy of private unaided colleges stressed by the larger Bench of this Court in *T.M.A. Pai Foundation vs. State of Karnataka* [(2002) 8 SCC Page 481]. He drew our attention in particular to paragraphs 50, 53, 55 & 68. Reliance has also been placed on the dicta laid down in *Jaya Gokul Educational Trust Vs. Commissioner & Secretary to Government Higher Education Department* [(2000) 5 SCC 231] at para 28. The learned counsel finally submitted that the High Court clearly exceeded its jurisdiction under Article 226 of the Constitution.

It is not possible for us to discredit the two inspection reports—one by the AICTE and the other by the team headed by the Director, IIT. No doubt there is an apparent variation between the observations made in these two reports and the earlier reports of AICTE, as well as the report of CSIO which was prepared at the instance of the appellant. In fact, this Court directed constitution of an independent team of experts when it was brought to the notice of the Court that there were conflicting reports. Such report should be given its due weight. Even though some of the comments, especially with regard to the buildings, are too widely made and even if there are some inaccuracies here and there as pointed out by the learned counsel for the appellant, the report cannot be simply ignored.

Even if basic infrastructure in the form of buildings and land is available, that is not all. The latest report of the team constituted under the orders of this Court as well as the report of AICTE furnished to the High Court and the earlier report of the University inspection team unmistakably indicate that there were deficiencies in many respects, especially in regard to IT course and all was not well with the functioning of the college. However, there seems to be good deal of improvement after the Administrator took over. The obligation to make up the deficiencies and to improve the general academic atmosphere lay on the shoulders of the College Management, but unfortunately, no positive steps were taken. Undoubtedly, there was discontentment amongst the students and the teachers. The High Court, taking stock of this factual situation and in order to ensure better administration and management, thought it fit to appoint an Administrator. However, the High Court apparently did not realize that there was no provision under which the management of an unaided private college could be taken over by the Administrator. In spite of our repeated query, none of the counsel was able to point out any provision either under the AICTE Act or the HP Education Act or University Act permitting the authorities to take over the management of institution. However laudable the objective behind the steps taken by the High Court, it cannot be justified under law. The imposition of an Administrator to take over the reins of administration for an indefinite point of time would undoubtedly amount to interference with the right of administering and managing a private educational institution which is now recognized to be a part of the fundamental

right under Article 19(1)(g) as held by this Court in *TMA Pai Foundation Vs. State of Karnataka* (Supra). It would go against the principle of autonomy in regard to administration which has been emphasized by this Court in the said case. In the circumstances, the jurisdiction under Article 226 could not have been exercised by the High Court to oust the private management and transfer the management to a Court-appointed official.

Directions to check mal-administration in conformity with the provisions of relevant statutes is one thing and deprivation of management to the private body which established the institution is another thing. The latter should not have been resorted to without authority of law. We have, therefore, no option but to set aside the order of the High Court appointing the Administrator to manage the affairs of the college. At the same time, we are of the view that certain checks and balances are needed to ensure proper administration of the college in the overall interest of the students. While allowing the previous Management (Society) to resume management, the present nominee of the Administrator (Joint Director, Technical Education) shall continue to play a role in overseeing the functioning of the college and guiding the Managing Committee at least for a year. It is to be noted that the Director, Technical Education is also one of the members of the Governing Body. He is not a stranger to the managing body of the College. If so, he can continue to play an active role if not in the capacity of the Director, in his capacity as a member of the Governing Body. We are anxious

to see that the process of improvements brought about by the Administrator and his nominee should not come to a halt and the students should not feel insecure.

Before concluding, we may refer to the argument of the learned senior counsel for the appellant that in view of what has been laid down in *Jaya Gokul Educational Trust Vs. Commissioner & Secretary to Government Higher Education* [(2000) 5 SCC 231], the University should not have withheld the affiliation inspite of the approval given earlier by AICTE. It is contended that the provisions of the AICTE Act and Regulations will prevail over the provisions if any in the University Act or State Act which are inconsistent with the provisions of the former Act. This contention need not be considered in view of the latest stand taken by AICTE and the approval/affiliation given by AICTE as well as University during the tenure of Administrator for courses other than IT.

In the result, the appeal is disposed of with the following directions:--

The management and administration of the college shall be restored to the appellant within a month. However, to protect the interests of the students by keeping up the tempo of improvements made by the Administrator and to have a check against mal-administration at least for sometime, we direct that the present nominee of the Administrator, namely, the Joint Director of Technical Education should be allowed to oversee the running of the institution and give necessary instructions to the Management in the interests of creating proper academic

atmosphere in the campus, while keeping in view the financial position and the obligations to be discharged by the Management to maintain necessary standards. The said official should be allowed to have access to material information including the financial position and transactions. In regard to admissions for the current year i.e., for the year 2003-2004, the list of admissions shall be finalized only after consultation with the said official and any objections pointed out by him should be duly considered by the Management. Nothing should be done by the Management to disturb the existing conditions of service of teaching and non-teaching staff to the detriment of such staff. Whatever amount that was withdrawn just before the pronouncement of the judgment of the High Court and subsequent to the judgment, shall be put back in the bank under intimation to the Joint Director, Technical Education. In case any irregularities or instances of mismanagement or non-compliance with the directives given herein are noticed, the Director of Technical Education may approach the High Court for appropriate orders. It is open to the AICTE/University authorities to call upon the petitioner to remedy the deficiencies that may be persisting at the time of granting affiliation/approval in the future and in case of non-compliance, to take such action as is open to them under law. The need or otherwise of the nominee official (Joint Director, Technical Education) to continue to be associated with the administration on the lines indicated supra may be reviewed by the High Court after the expiry of at least one year.

The operative part of this judgment was pronounced on 9<sup>th</sup> May, 2003.  
This detailed judgment with reasons is now pronounced.

.....J.  
[K.G.Balakrishnan]

.....J.  
[P.Venkatarama Reddi]

New Delhi,  
August 8, 2003.

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (C) NO. 350 OF 1993  
(Under Article 32 of the Constitution of India)

Islamic Academy of Education and Anr.

..Petitioners

v.

State of Karnataka and Ors.

..Respondents

(With SLP(C) Nos. 11286, 1139, 11189-11195/2003, W.P.(C) Nos.355/93, 174/2003, T.P.(C) Nos.286-288/2003, SLP(C) Nos.3465-3466, 3942-3943, 4002-4003, 9253-9254, 10561/2003, W.P.(C) Nos. 261, 275, 280, 289 of 2003)

THE 14TH DAY OF AUGUST, 2003

Present:

Hon'ble the Chief Justice  
Hon'ble Mr. Justice S.N.Variava  
Hon'ble Mr. Justice K.G.Balakrishnan  
Hon'ble Mr. Justice Arijit Pasayat  
Hon'ble Mr. Justice S.B.Sinha

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Gourav Agarwal, Prasant Kumar, Joseph Pookkatt, T.N.Subramanian, M.Qamaruddin, Mrs.M.Qamaruddin, Ambar Qamaruddin, Manish Goswami, Advs. with them for the appearing parties.

JUDGMENTS

The following Judgments of the Court were delivered:

\*CP\*



**IN THE SUPREME COURT OF INDIA**

**CIVIL ORIGINAL JURISDICTION**

**Writ Petition (Civil) No. 350 of 1993**

**Islamic Academy of Education and another..... Petitioners**

**-versus-**

**State of Karnataka and others..... Respondents**

(With S.L.P.(Civil) Nos. 11286/2003, 11591/2003, 11189-11195/2003, W.P.(Civil) Nos. 355/1993, 174/2003, T.P.(Civil) No. 286-288/2003, S.L.P.(Civil) Nos. 3465-3466/2003, 3942-3943/2003, 4002-4003/2003, 9253-9254/2003, 10561/2003, W.P.(Civil) Nos. 261/2003, 275/2003, 280/2003, 289/2003)

**JUDGMENT**

**V. N. KHARE, CJI for himself and for Variava, Balakrishnan and Pasavat, JJ.**

On 31<sup>st</sup> October, 2002 eleven Judge Bench of this Court delivered the Judgment in the case of T.M.A. Pai Foundation and Ors. v. State of Karnataka and Ors. (2002 (8) SCC 481). A brief history as to how a eleven Judge Bench of this Court came to decide this case is set out in para 3 of the judgment, which reads as under:

"3. The hearing of these cases has had a chequered history. Writ Petition No. 350 of 1993 filed by the Islamic Academy of Education and connected petitions were placed before a Bench of five Judges. As the Bench was *prima facie* of the opinion that Article 30 did not clothe a

minority educational institution with the power to adopt its own method of selection and the correctness of the decision of this Court in *St Stephens College versus University of Delhi* was doubted, it was directed that the questions that arose should be authoritatively answered by a larger Bench. These cases were then placed before a bench of seven Judges. The questions framed were recast and on 6-2-1997, the Court directed that the matter be placed before a Bench of at least eleven Judges, as it was felt that in view of the Forty-second Amendment to the Constitution, whereby "education" had been included in Entry 25 of List III of Seventh Schedule, the question of who would be regarded as a "minority" was required to be considered because the earlier case-law related to the pre-amendment era, when education was only in the State List....."

After the Judgment was delivered, on 31<sup>st</sup> October 2002, the Union of India, various State Governments and the educational institutions understood the majority judgment in different perspectives. Different statutes/regulations were enacted/framed by different State Governments. These led to litigations in several Courts. Interim orders passed therein have been assailed before this Court. When these matters came up before a Bench of this Court, the parties to the writ petitions and special leave petitions attempted to interpret the majority decision in their own way as suited to them and therefore at their request all these matters were placed before a Bench of five Judges. It is under these circumstances that this Bench has been constituted so that doubts/anomalies, if any, could be clarified.

Most of the petitioners/applicants before us are unaided professional educational institutions (both minority and non-minority). On behalf of the petitioners/applicants it was submitted that the answers given to the questions, as set out at the end of the majority Judgment, lay down the true ratio of the Judgment. It was submitted that any

observation made in the body of the judgment had to be read in the context of the answers given. We are unable to accept this submission. The answers to the questions, in the majority Judgment in Pai's case, are merely a brief summation of the ratio laid down in the Judgment. The *ratio decidendi* of a Judgment has to be found out only on reading the entire Judgment. In fact, the ratio of the judgment is what is set out in the judgment itself. The answer to the question would necessarily have to be read in the context of what is set out in the judgment and not in isolation. In case of any doubt as regards any observations, reasons and principles, the other part of the judgment has to be looked into. By reading a line here and there from the judgment, one cannot find out the entire *ratio decidendi* of the judgment. We, therefore, while giving our clarifications, are deposed to look into other parts of the Judgment other than those portions which may be relied upon.

Very briefly stated the other submissions were as follows:

On behalf of the petitioners/applicants it was also submitted that fixation of percentages of seats that could be filled in the unaided professional colleges both minority and non minority by the management, as done by various State Governments, was impermissible. It is further submitted that the private unaided professional educational institutions, had been given complete autonomy not only as regards the admission of students but also as regards the determination of their own fee structure. It was submitted that these institutions could fix their own fee structure, which could

include a reasonable revenue surplus for purposes of development of education and expansion of the institution, and that so long as there was no profiteering or charging of capitation fees, there could be no interference by the Government. It was submitted that the right to admit students is an essential facet of the right to administer, and so long as admission to the unaided educational institutions is on a fair and transparent basis and on the basis of merit, government cannot interfere. It was submitted that these institutions are entitled to fill up all their seats by adopting/evolving a rational and transparent method of admission which ensures that merit is adequately taken care of. It was submitted that in any event the institutions should be given a choice and be allowed to admit students on basis of the ICSC or SSC or other such examination. It was also suggested that educational institutions of a particular type may be permitted to associate themselves for the purposes of holding a common entrance test in each State. On behalf of minority institutions, it was submitted that they are entitled to fill up all the seats with students of their own community/language. On behalf of non-minority institutions, it was submitted that they also had a fundamental right to establish and administer educational institutions and that the majority Judgment puts them on a par with the minority institutes.

As against this, on behalf of the Union of India, various State Governments and some students, who sought to intervene, it was submitted that the right to set up and administer an educational institution was not an absolute right, and this right is subject to reasonable restrictions and that this right is subject (even in respect of minority

institutions) to national interest. It was submitted that imparting education was a State function but, due to resources crunch, the States were not in a position to establish sufficient number of educational institutions. It was submitted that, because of such resources crunch, the States were permitting private educational institutions to perform State functions. It was submitted that the Union of India, the States, Universities had statutory rights to fix the fees and to regulate admission of students in order to ensure (a) that there was no profiteering; (b) capitation fees were not charged; (c) admissions were based on principles of merit and (d) to ensure that persons from the backward classes and poorer sections of society also had an opportunity to receive education, particularly, professional education. It was submitted that if these educational institutions were permitted to have their own tests for admission, the students would be put to undue harassment and hardship inasmuch as they would have to pay for application forms in various colleges and appear for tests in various colleges. It was pointed out that even if each institution charged Rs. 500 to Rs. 1000 a student would ultimately have to pay a large amount by way of application fees as, in the absence of a common entrance test and admission procedure the students would have to apply to a number of colleges. It is submitted that the students would also have to spend for transport from and to each college and may find it difficult, if not impossible to travel, from one college to another, to appear in all the tests. It was submitted that unless it was ensured that colleges admit students strictly on the basis of merit at a common entrance test, it would be impossible to ensure that capitation fees were not charged and that there was no profiteering. It was pointed out that some colleges do not even issue admission forms unless and until the

student agrees to pay a hefty sum. It was submitted that the majority Judgment clarified that Article 30 had been enacted not for the purposes of giving any special right or privileges to the minority educational institutions, but to ensure that the minorities had equal rights with the majority. It was submitted that minority educational institutions cannot claim any higher or better rights than those enjoyed by the non-minority educational institutions.

Both sides relied upon various passages from the majority judgment in support of the respective submissions. These passages are reproduced hereinafter.

In view of the rival submissions the following questions arise for consideration:

- 1) whether the educational institutions are entitled to fix their own fee structure;
- 2) whether minority and non minority educational institutions stand on the same footing and have the same rights;
- 3) whether private unaided professional colleges are entitled to fill in their seats, to the extent of 100%, and if not to what extent; and
- 4) whether private unaided professional colleges are entitled to admit students by evolving their own method of admission;

Question No. 1.

So far as the first question is concerned, in our view the majority judgment is very clear. There can be no fixing of a rigid fee structure by the government. Each institute must have the freedom to fix its own fee structure taking into consideration the need to



generate funds to run the institution and to provide facilities necessary for the benefit of the students. They must also be able to generate surplus which must be used for the betterment and growth of that educational institution. In paragraph 56 of the judgment it has been categorically laid down that the decision on the fees to be charged must necessarily be left to the private educational institutions that do not seek and which are not dependent upon any funds from the Government. Each institute will be entitled to have its own fee structure. The fee structure for each institute must be fixed keeping in mind the infrastructure and facilities available, the investments made, salaries paid to the teachers and staff, future plans for expansion and/or betterment of the institution etc. Of course there can be no profiteering and capitation fees cannot be charged. It thus needs to be emphasized that as per the majority judgment imparting of education is essentially charitable in nature. Thus the surplus/profit that can be generated must be only for the benefit use of that educational institution. Profits/surplus cannot be diverted for any other use or purpose and cannot be used for personal gain or for any other business or enterprise. As, at present, there are statutes/regulations which govern the fixation of fees and as this Court has not yet considered the validity of those statutes/regulations, we direct that in order to give effect to the judgment in TMA PAT's case the respective State Governments concerned authority shall set up, in each State, a committee headed by a retired High Court judge who shall be nominated by the Chief Justice of that State. The other member, who shall be nominated by the Judge, should be a Chartered Accountant of repute. A representative of the Medical Council of India (in short 'MCI') or the All India Council for Technical Education (in short 'AICTE'), depending on the type of

institution, shall also be a member. The Secretary of the State Government in charge of Medical Education or Technical Education, as the case may be, shall be a member and Secretary of the Committee. The Committee should be free to nominate/co-opt another independent person of repute, so that total number of members of the Committee shall not exceed 5. Each educational Institute must place before this Committee, well in advance of the academic year, its proposed fee structure. Along with the proposed fee structure all relevant documents and books of accounts must also be produced before the committee for their scrutiny. The Committee shall then decide whether the fees proposed by that institute are justified and are not profiteering or charging capitation fee.. The Committee will be at liberty to approve the fee structure or to propose some other fee which can be charged by the institute. The fee fixed by the committee shall be binding for a period of three years, at the end of which period the institute would be at liberty to apply for revision. Once fees are fixed by the Committee, the institute cannot charge either directly or indirectly any other amount over and above the amount fixed as fees. If any other amount is charged, under any other head or guise e.g. donations the same would amount to charging of capitation fee. The Governments/appropriate authorities should consider framing appropriate regulations, if not already framed, whereunder if it is found that an institution is charging capitation fees or profiteering that institution can be appropriately penalised and also face the prospect of losing its recognition/affiliation.

It must be mentioned that during arguments it was pointed out to us that some educational institutions are collecting, in advance, the fees for the entire course i.e. for all the years. It was submitted that this was done because the institute was not sure whether

the student would leave the institute midstream. It was submitted that if the student left the course in midstream then for the remaining years the seat would lie vacant and the institute would suffer. In our view an educational institution can only charge prescribed fees for one semester/year. If an institution feels that any particular student may leave in midstream then, at the highest, it may require that student to give a bond/bank guarantee that the balance fees for the whole course would be received by the institute even if the student left in midstream. If any educational institution has collected fees in advance, only the fees of that semester/year can be used by the institution. The balance fees must be kept invested in fixed deposits in a nationalised bank. As and when fees fall due for a semester/year only the fees falling due for that semester/year can be withdrawn by the institution. The rest must continue to remain deposited till such time that they fall due. At the end of the course the interest earned on these deposits must be paid to the student from whom the fees were collected in advance.

### Question No. 2

The next question for consideration is whether minority and non minority educational institutions stand on the same footing and have the same rights under the Judgment. In support of the contention that the minority and non minority educational institutions had the same rights reliance was placed upon paragraphs 138 and 139 of the Judgment. These read as follows:

"138. As we look at it, Article 30(1) is a sort of guarantee or assurance to the linguistic and religious minority institutions of their right to establish and administer educational institutions of their choice. Secularism and

equality being two of the basic features of the Constitution, Article 30(1) ensures protection to the linguistic and religious minorities; thereby preserving the secularism of the country. Furthermore, the principles of equality must necessarily apply to the enjoyment of such rights. No law can be framed that will discriminate against such minorities with regard to the establishment and administration of educational institutions vis-à-vis other educational institutions. Any law or rule or regulation that would put the educational institutions run by the minorities at a disadvantage when compared to the institutions run by the others will have to be struck down. At the same time, there also cannot be any reverse discrimination. It was observed in St. Xaviers College case, at page 192, that "the whole object of conferring the right on minorities under Article 30 is to ensure that there will be equality between the majority and the minority. If the minorities do not have such special protection, they will be denied equality." In other words, the essence of Article 30(1) is to ensure equal treatment between the majority and the minority institutions. No one type or category of institution should be disfavoured or, for that matter receive more favourable treatment than another. Laws of the land, including rules and regulations, must apply equally to the majority institutions as well as to the minority institutions. The minority institutions must be allowed to do what the non-minority institutions are permitted to do."

"139 Like any other private unaided institutions, similar unaided educational institutions administered by linguistic or religious minorities are assured maximum autonomy in relation thereto; e.g., method of recruitment of teachers, charging of fees and admission of students. They will have to comply with the condition of recognition, which cannot be such as to whittle down the right under Article 30."

Undoubtedly at first blush it does appear that these paragraphs equate both types of educational institutions. However on a careful reading of these paragraphs it is evident that the essence of what has been laid down is that the minority educational institutions have a guarantee or assurance to establish and administer educational institutions of their choice. These paragraphs merely provide that laws, rules and regulations cannot be such that they favour majority institutions over minority institutions. We do not read these paragraphs to mean that non minority educational institutions would have the same rights as those conferred on minority educational institutions by Article 30 of the Constitution

of India. Non minority educational institutions do not have the protection of Article 30. Thus, in certain matters they cannot and do not stand on similar footing as minority educational institutions. Even though the principle behind Article 30 is to ensure that the minorities are protected and are given an equal treatment yet the special right given under Article 30 does give them certain advantages. Just to take a few examples, the Government may decide to nationalise education. In that case it may be enacted that private educational institutions will not be permitted. Non minority educational institutions may become bound by such an enactment. However, the right given under Article 30 to minorities cannot be done away with and the minorities will still have a fundamental right to establish and administer educational institutions of their choice. Similarly even though the government may have a right to take over management of a non minority educational institution the management of a minority educational institution cannot be taken over because of the protection given under Article 30. Of course we must not be understood to mean that even in national interest a minority institute cannot be closed down. Further minority educational institutions have preferential right to admit students of their own community/language. No such rights exist so far as non minority educational institutions are concerned.

#### Questions Nos. 3 and 4

Questions 3 and 4 pertain to private unaided professional colleges. Thus all observations in answer to questions 3 and 4 are therefore confined to such educational institutions.

In order to answer the third and fourth questions it is necessary to see the manner in which the majority judgment is framed and to consider certain paragraphs of the judgment. The majority judgment considered various aspects under different heads. The 3rd head is "In case of private institutions, can there be government regulations and, if so, to what extent?". This is further divided into four subheadings viz. "Private unaided non minority educational institutions"; "Private unaided professional colleges"; "Private aided professional institutions (non minority)" and "Other aided institutions". The paragraph which has been strongly relied upon is paragraph 68 which is under the sub-heading "Private unaided professional colleges". The said paragraph reads as under:

"68. It would be unfair to apply the same rules and regulations regulating admission to both aided and unaided professional institutions. It must be borne in mind that unaided professional institutions are entitled to autonomy in their administration while, at the same time, they do not forgo or discard the principle of merit. It would, therefore, be permissible for the university or the government, at the time of granting recognition, to require a private unaided institution to provide for merit-based selection while, at the same time, giving the Management sufficient discretion in admitting students. This can be done through various methods. For instance, a certain percentage of the seats can be reserved for admission by the Management out of those students who have passed the common entrance test held by itself or by the State/University and have applied to the college concerned for admission, while the rest of the seats may be filled up on the basis of counseling by the state agency. This will incidentally take care of poorer and backward sections of the society. The prescription of percentage for this purpose has to be done by the government according to the local needs and different percentages can be fixed for minority unaided and non-minority unaided and professional colleges. The same principles may be applied to other non-professional but unaided educational

institutions viz., graduation and post graduation non-professional colleges or institutes.”

Reliance was also placed on paragraphs 58 and 59 which read as follows:

“58. For admission into any professional institution, merit must play an important role. While it may be normally possible to judge the merit of the applicant who seeks admission into a school, while seeking admission to a professional institution and to become a competent professional, it is necessary that meritorious candidates are not unfairly treated or put at a disadvantage by preferences shown to less meritorious but more influential applicants. Excellence in professional education would require that greater emphasis be laid on the merit of a student seeking admission. Appropriate regulations for this purpose may be made keeping in view the other observations made in this judgment in the context of admissions to unaided institutions.”

“59. Merit is usually determined for admission to professional and higher education colleges, by either the marks that the student obtains at the qualifying examination or school leaving certificate stage followed by the interview, or by a common entrance test conducted by the institution, or in the case of professional colleges, by government agencies.”

Based on the above paragraphs it had been submitted, on behalf of the Union of India, various State Governments and students that the majority Judgment makes a clear distinction between professional educational institutions (both minority and non minority) and other educational institutions i.e. schools and undergraduate colleges. The submission was that in professional institutions merit had to play an important role and that excellence in professional education required that for purposes of admission merit is determined by Government agencies. It is submitted that paragraph 68 provides that in

unaided professional colleges only a "certain" percentage of seats can be reserved for admission by the management. It is submitted that the said paragraph provides that it is permissible for the University or the Government to require a private unaided professional institute to provide for a merit based selection. It was submitted that paragraph 68, read with paragraph 59, lays down that in unaided professional colleges merit is to be determined by a common entrance test conducted by Government agencies.

Paragraph 68 of the majority judgment in *Pai's case* can be split into seven parts :-

Firstly, it deals with the unaided minority or non-minority professional colleges.

Secondly, it will be unfair to apply the rule and regulations framed by the State Government as regards the government aided professional colleges to the unaided professional colleges.

Thirdly, the unaided professional institutions are entitled to autonomy in their administration; while at the same time they should not forego or discard the principles of merit.

Fourthly, it is permissible for the university or the Government at the time of granting recognition to require an unaided institution to provide for merit based admission while at the same time giving the management sufficient discretion in admitting students.

Fifthly, for unaided non-minority professional colleges certain percentage of seats can be reserved for admission by the management out of those students who have passed the common test held by itself or by the State/University and for applying to the



college/university for admission, while the rest of the seat may be filled up on the basis of counseling by the State agency.

Sixthly, the provisions for poorer and backward sections of the society in unaided professional colleges are also to be provided for.

Seventhly, the prescription for percentage of seats in unaided professional colleges has to be done by the government according to the local needs. A different percentage of seats for admission can be fixed for minority unaided and non-minority unaided professional colleges.

Undoubtedly the majority judgment makes a distinction between private unaided professional colleges and other educational institutions i.e. schools and undergraduate colleges. The subheading "Private unaided professional colleges" includes both minority as well as non minority professional colleges. This is also clear from a reading of paragraph 68. It appears to us that this distinction has been made (between private unaided professional colleges and other educational institutions) as the Judgment recognises that it is in national interest to have good and efficient professionals. The Judgment provides that national interest would prevail, even over minority rights. It is for this reason that in professional colleges, both minority and non-minority, merit has been made the criteria for admission. However a proper reading of paragraph 68, indicates that a further distinction has been made between minority and non minority professional colleges. It is provided that in cases of non minority professional colleges "a certain percentage of seats" can be reserved for admission by the management. The rest have to

be filled up on bases of counseling by State agencies. The prescription of percentage has to be done by the Government according to local needs. Keeping this in mind provisions have to be made for the poorer and backward sections of the society. It must be remembered that, so far as medical colleges are concerned, an essentiality certificate has to be obtained before the college can be set up. It cannot be denied that whilst issuing the essentiality certificate the respective State Governments take into consideration the local needs. These aspects have been highlighted in a recent decision of this Court in *State of Maharashtra vs. Medical Association and others* [2002 (1) SCC 589]. Whilst granting the essentiality certificate the State Government undertakes to take over the obligations of the private educational institution in the event of that institution becoming incapable of setting of the institution or imparting education therein. A reading of paragraphs 59 and 68 shows that in non minority professional colleges admission of students, other than the percentage given to the management, can only be on the basis of merit as per the common entrance tests conducted by government agencies. The manner in which the percentage given to the management can be filled in is set out hereinafter.

Paragraph 68 provides that a different percentage can be prescribed for unaided minority institutions. That the same yardstick cannot be applied to both minority and non minority professional colleges is also clear from the fact that paragraph 68 also falls under main heading "In case of private institutions, can there be government regulations and, if so, to what extent?". Paragraph 47, which is one of the first paragraph under this heading, *inter-alia* provides as follows:

professional colleges admission must be on the basis of merit. As has been rightly submitted it is impossible to control profiteering/charging of capitation fees unless it is ensured that admission is on the basis of merit. Also as has been rightly pointed out if a student is required to appear at more than one entrance test it would lead to great hardship. The application fees charged by each institute, even though they may be only Rs. 500 to Rs. 1000 for each institute, would impose a heavy burden on the students who will necessarily have to apply to a number of colleges. Further as has been rightly pointed out, students would have to arrange for transport from and to and stay at various places if they have to appear for individual tests conducted by each College. If a student has to go for test to each institute it is possible that he/she may not be able to reach, in time, the venue of a test of a particular institute. In our view what is necessary is a practical approach keeping in mind the need for a merit based selection. Paragraph 68 provides that admission by the management can be by a common entrance test held by "itself or by State/University". The words "common entrance test" clearly indicate that each institute cannot hold a separate test. We thus hold that the management could select students, of their quota, either on the basis of the common entrance tests conducted by the State or on the basis of a common entrance test to be conducted by an association of all colleges of a particular type in that State e.g. medical, engineering or technical etc. The common entrance test, held by the association, must be for admission to all colleges of that type in the State. The option of choosing, between either of these tests, must be exercised before issuing of prospectus and after intimation to the concerned authority and the Committee set up hereinafter. If any professional college chooses not to admit from

the common entrance test conducted by the association then that college must necessarily admit from the common entrance test conducted by the State. After holding the common entrance test and declaration of results the merit list will immediately be placed on the notice board of all colleges which have chosen to admit as per this test. A copy of the merit list will also be forthwith sent to the concerned authority and the Committee. Selection of students must then be strictly on basis of merit as per that merit list. Of course, as indicated earlier, minority colleges will be entitled to fill up their quota with their own students on basis of inter-se merit amongst those students. The list of students admitted, along with the rank number obtained by the student, the fees collected and all such particulars and details as may be required by the concerned authority or the Committee must be submitted to them forthwith. The question paper and the answer papers must be preserved for such period as the concerned authority or Committee may indicate. If it is found that any student has been admitted de-hors merit penalty can be imposed on that institute and in appropriate cases recognition/affiliation may also be withdrawn.

At this juncture it is brought to our notice that several institutions, have since long, had their own admission procedure and that even though they have been admitting only students of their own community no finger has ever been raised against them and no complaints have been made regarding fairness or transparency of the admission procedure adopted by them. These institutions submit that they have special features and that they stand on a different footing from other minority non-aided professional

professional colleges admission must be on the basis of merit. As has been rightly submitted it is impossible to control profiteering/charging of capitation fees unless it is ensured that admission is on the basis of merit. Also as has been rightly pointed out if a student is required to appear at more than one entrance test it would lead to great hardship. The application fees charged by each institute, even though they may be only Rs. 500 to Rs. 1000 for each institute, would impose a heavy burden on the students who will necessarily have to apply to a number of colleges. Further as has been rightly pointed out, students would have to arrange for transport from and to and stay at various places if they have to appear for individual tests conducted by each College. If a student has to go for test to each institute it is possible that he/she may not be able to reach, in time, the venue of a test of a particular institute. In our view what is necessary is a practical approach keeping in mind the need for a merit based selection. Paragraph 68 provides that admission by the management can be by a common entrance test held by "itself or by State/University". The words "common entrance test" clearly indicate that each institute cannot hold a separate test. We thus hold that the management could select students, of their quota, either on the basis of the common entrance tests conducted by the State or on the basis of a common entrance test to be conducted by an association of all colleges of a particular type in that State e.g. medical, engineering or technical etc. The common entrance test, held by the association, must be for admission to all colleges of that type in the State. The option of choosing, between either of these tests, must be exercised before issuing of prospectus and after intimation to the concerned authority and the Committee set up hereinafter. If any professional college chooses not to admit from

the common entrance test conducted by the association then that college must necessarily admit from the common entrance test conducted by the State. After holding the common entrance test and declaration of results the merit list will immediately be placed on the notice board of all colleges which have chosen to admit as per this test. A copy of the merit list will also be forthwith sent to the concerned authority and the Committee. Selection of students must then be strictly on basis of merit as per that merit list. Of course, as indicated earlier, minority colleges will be entitled to fill up their quota with their own students on basis of inter-se merit amongst those students. The list of students admitted, along with the rank number obtained by the student, the fees collected and all such particulars and details as may be required by the concerned authority or the Committee must be submitted to them forthwith. The question paper and the answer papers must be preserved for such period as the concerned authority or Committee may indicate. If it is found that any student has been admitted de-hors merit penalty can be imposed on that institute and in appropriate cases recognition/affiliation may also be withdrawn.

At this juncture it is brought to our notice that several institutions, have since long, had their own admission procedure and that even though they have been admitting only students of their own community no finger has ever been raised against them and no complaints have been made regarding fairness or transparency of the admission procedure adopted by them. These institutions submit that they have special features and that they stand on a different footing from other minority non-aided professional

institutions. It is submitted that their cases are not based only on the right flowing from Article 30(1) but in addition they have some special features which requires that they be permitted to admit in the manner they have been doing for all these years. A reference is made to few such institutions i.e. Christian Medical College, Vellore, St. Johns Hospital, Islamic Academy of Education etc . The claim of these institutions was disputed. However we do not think it necessary to go into those questions. We leave it open to institutions which have been established and who have had their own admission procedure or, at least, the last 25 years to apply to the Committee set out hereinafter.

Lastly, it must be mentioned that it was urged by learned counsel for the appellant that paragraph 68 of the majority judgment only permits University/State to provide for merit based selection at the time of granting recognition/affiliation. It was also submitted that once recognition/affiliation is granted to unaided professional colleges, such a stipulation cannot be provided subsequently. We are unable to accept this submission. Such a provision can be made at the time of granting recognition/affiliation as well as subsequently after the grant of such recognition/affiliation.

We now direct that the respective State Government do appoint a permanent Committee which will ensure that the tests conducted by the association of colleges is fair and transparent. For each State a separate Committee shall be formed. The Committee would be headed by a retired Judge of the High Court. The Judge to be

nominated by the Chief Justice of that State. The other member, to be nominated by the Judge, would be a doctor or an engineer of eminence (depending on whether the institution is medical or engineering/technical). The Secretary of the State in charge of Medical or Technical Education, as the case may be, shall also be a member and act as Secretary of the Committee. The Committee will be free to nominate/co-opt an independent person of repute in the field of education as well as one of the Vice Chancellors of University in that State so that the total number of persons on the Committee do not exceed five. The Committee shall have powers to oversee the tests to be conducted by the association. This would include the power to call for the proposed question paper/s, to know the names of the paper setters and examiners and to check the method adopted to ensure papers are not leaked. The Committee shall supervise and ensure that the test is conducted in a fair and transparent manner. The Committee shall have power to permit an institution, which has been established and which has been permitted to adopt its own admission procedure for the last, at least, 25 years, to adopt its own admission procedure and if the Committee feels that the needs of such an institute are genuine, to admit students or their community, in excess of the quota allotted to them by the State Government. Before exempting any institute or varying in percentage of quota fixed by the State, the State Government must be heard before the Committee. It is clarified that different percentage of quota for students to be admitted by the management in each minority or non-minority unaided professional college/s shall be separately fixed on the basis of their need by the respective State Governments and in case of any dispute as regards fixation of percentage of quota, it will be open to the



management to approach the Committee. It is also clarified that no institute, which has not been established and which has not followed its own admission procedure for the last, at least, 25 years, shall be permitted to apply for or be granted exemption from admitting students in the manner set out hereinabove.

Our direction for setting up two sets of Committees in the States has been passed under Article 142 of the Constitution of India which shall remain in force till appropriate legislation is enacted by the Parliament. The expenses incurred on the setting up of such Committees shall be borne by each State. The infrastructural needs and provision for allowance and remuneration of the Chairman and other members of the Committee shall also be borne by the respective State Government.

So far as the year 2003-2004 is concerned, time is running out as the outer time limit for admission is fast approaching or has gone. To meet the urgent situation without going into the issues involved in the various petitions/applications, we direct that the seats be filled up by the institution and the State Governments in the ratio 50:50. However, if by any interim order, this Court has permitted any institution to fill up a higher percentage of seats and the seats have been filled up accordingly, the same shall not be disturbed. It is made clear that due to the time constraint this arrangement has been made, without deciding the contentious issue involved in various pending cases.

With these clarifications we now direct that all the matters be placed before the regular benches for disposal on merits.

All Interlocutory applications as regard interim matters stand disposed of.

\_\_\_\_\_.CJI  
(V. N. KHARE)

\_\_\_\_\_.J  
(S. N. VARIAVA)

\_\_\_\_\_.J  
(K. G. BALAKRISHNAN)

\_\_\_\_\_.J  
(ARIJIT PASAYAT)

New Delhi;  
14<sup>th</sup> August, 2003

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

Writ Petition (Civil) No. 350 of 1993

Islamic Academy of Edn. & Anr.

..Petitioner (s)

Versus

State of Karnataka & Ors.

..Respondent (s)

with SLP(C) Nos. 11286, 11391, 11189-  
11195/2003, W.P.(C) Nos. 355/1993,  
174/2003, T.P.(C) Nos. 286-288/2003,  
SLP(C) Nos. 3465-3466, 3942-3943, 4002-  
4003, 9253-9254, 10561/2003, W.P.(C)No.  
261, 275, 280 & 289/2003

J U D G M E N T

S.B. SINHA, J. :

INTRODUCTORY REMARKS

Imparting of education is a State function. The State, however, having regard to its financial and other constraints is not always in a position to perform its duties. The function of imparting education has been, to a large extent, taken over by the citizens themselves. Some do it as pure charity; some do it for protection of their minority rights whether based on religion or language; and some do it by way of their "occupation". Some such institutions are aided by the State and some are unaided.

Privately managed educational institutions imparting professional education in the fields of medicine, dentistry

and engineering have spurred in the last few decades. The right of the minorities to establish an institution of their own choice in terms of clause (1) of Article 30 of the Constitution of India is recognized; so is the right of a citizen who intends to establish an institution under Article 19(1)(g) thereof. However, the fundamental right of a citizen to establish an educational institution and in particular a professional institution is not absolute. These rights are subject to regulations and laws imposing reasonable restrictions. Such reasonable restrictions in public interest can be imposed under clause (6) of Article 19 and regulations under Article 30 of the Constitution of India. The right to establish an educational institution, although guaranteed under the Constitution, recognition or affiliation is not. Recognition or affiliation of professional institutions must be in terms of the statute.

Entry 66 of List I and Entry 25 of List III of the Seventh Schedule of the Constitution of India provide for legislative field in this behalf. Various States have enacted laws for regulating admission and prohibiting charging of capitation fee. The said legislations also provide for employment of teachers, their conditions of service, discipline in institution and several other matters. Such regulatory measures have been the subject matter of various decisions of this Court.

BACKGROUND :

This Court in Unni Krishnan J.P. and Others vs. State of Andhra Pradesh and Others [(1993) 1 SCC 645] laid down a Scheme. In terms of the said Scheme the self-financed institutions were entitled to admit 50% of students of their choice, whereas rest of the seats were to be filled in by the State. For admission of students, a common entrance test was to be held. Provisions for free seats and payment seats were made therein. The State and various statutory authorities including the Medical Council of India, University Grants Commission and All India Council for Technical Education made and/or amended regulations so as to bring them at par with the said Scheme.

The Islamic Academy of Education filed a writ petition in the year 1993 questioning the validity thereof. The said writ petition along with connected matters were placed before a Bench of five Judges, which was prima facie of the view that Article 30 of the Constitution of India did not clothe minority educational institutions with the power to adopt its own method of selecting students.

This Court in T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others [(2002) 8 SCC 481] noticed the same stating :

"The hearing of these cases has had a chequered history. Writ Petition No. 350 of 1993 filed by the Islamic Academy of Education and connected petitions were placed before a Bench of 5 Judges. As the Bench was *prima facie* of the opinion that Article 30 did not clothe a minority educational institution with the power to adopt its own method of selection and the correctness of the decision of this Court in *St. Stephen's College v. University of Delhi* [(1992) 1 SCC 558] was doubted, it was directed that the questions that arose should be authoritatively answered by a larger Bench. These cases were then placed before a Bench of 7 Judges. The questions framed were recast and on 6<sup>th</sup> February, 1997, the Court directed that the matter be placed a Bench of at least 11 Judges, as it was felt that in view of the Forty-Second Amendment to the Constitution, whereby "education" had been included in Entry 25 of List III of the Seventh Schedule, the question of who would be regarded as a "minority" was required to be considered because the earlier case laws related to the pre-amendment era, when education was only in the State List. When the cases came up for hearing before an eleven Judge Bench, during the course of hearing on 19<sup>th</sup> March, 1997, the following order was passed:-

"Since a doubt has arisen during the course of our arguments as to whether this Bench would feel itself bound by the ratio propounded in -- In Re Kerala Education Bill, 1957 (1959 SCR 955) and the Ahmedabad St. Xavier's College Society v. State of Gujarat, 1975(1) SCR 173, it is clarified that this sized Bench would not feel itself inhibited by the views expressed in those cases since the present endeavour is to discern the true scope and interpretation of Article 30(1) of the Constitution, which being the dominant question would require

examination in its pristine purity.  
The factum is recorded."

The eleven Judge Bench answered various questions raised therein.

The petitioners/applicants before us are private unaided institutions. Most of them have been established by a Society, Trust or persons belonging to the minority community based on religion or language.

By reason of the impugned legislations/ Government orders, the State Governments, inter alia, while seeking to lay down the government quota in relation to such unaided institutions, directed that while filling up the same, the self-financed institutions must follow the merit list prepared by the State on the basis of External Common Entrance Test (CET). The State Governments also fixed/regulated fees to be charged from the students by such institutions.

Validity or otherwise of the said rules/regulations/ Governmental Orders came up for consideration before several High Courts. Different High Courts in their Orders while granting interim reliefs, construed the judgment of this Court in T.M.A. Pai Foundation (supra) differently. The perceptions of the States as also the High Courts in reading the judgment are widely varied. In the aforementioned situation, several applications have been filed in the

matters which were disposed of by the 11-Judge Bench of this Court. Some institutions as also the State of Kerala had also filed Special Leave Petitions against the interim orders passed by the High Courts. Some writ petitions under Article 32 of the Constitution of India have also been filed. Keeping in view the importance of the question, this Court issued notices to all the State Governments.

In the Special Leave Petitions and the Writ Petitions several other questions have also been raised but as at present advised this Bench intends to confine itself to the interpretation of judgment of this Court in T.M.A. Pai Foundation (supra) leaving other questions open for consideration by the appropriate benches.

In these matters this Court is not at all concerned with the rights of the aided minority and non-minority institutions and restrictions imposed by the States upon them but we are concerned only with the rights and obligations of private unaided institutions run by the minorities and non-minorities.

#### SUBMISSIONS MADE ON BEHALF OF WRIT PETITIONERS - APPLICANTS:

It was urged that while interpreting the judgment, this Court should bear in mind the salient aspects of the findings in T.M.A. Pai (supra) that is to say :

#### I ON THE FUNDAMENTAL RIGHTS OF EDUCATIONAL INSTITUTIONS:



- (i) Citizens have a fundamental right to establish and administer educational institutions under Article 19(1)(g), 21, 26 and 30 of the Constitution (Paras 25 & 26) and, thus, the said rights cannot be taken away/restricted.
- (ii) Such a fundamental right extends to education at all levels including professional education. (Para 161)
- (iii) The right to establish and administer educational institutions comprises of the right to
  - (a) admit students
  - (b) set up a reasonable fee structure
  - (c) constitute a governing body
  - (d) appoint staff and take disciplinary action (Para 50)
- (iv) Although such rights are subject to reasonable restrictions, but the same must be for the betterment of the institution and as such the right under Article 19(1)(g) and Article 30 cannot be undermined. (Paras 135-138)
- (v) Restrictions can be imposed only at the time of grant of recognition or affiliation of the institutions and not thereafter.
- (vi) The right of the citizens vis-à-vis the minority communities must be judged keeping in view the distinction between
  - (a) unaided and aided institutions

(b) minority and non-minority institutions (Paras 46-73);

## II ON THE DEGREE OF CONTROL

It was contended that although some amount of regulation/ control is permissible but the validity thereof is required to be considered:

- (i) In the light of the decision of this Court that the Scheme framed in Unnikrishnan has been abolished and consequent directions issued on the basis thereof by the UGC, AICTE, MCI, Central and State Governments etc. have been held to be invalid. (Para 45)
- (ii) While exercising the power of control, it is impermissible to nationalize education particularly with regard to the right of minorities to admit members of their own community as also fixing the fee. (Para 38) Minority institutions are not to subsidize the State nor any principle of cross-subsidy can be deciphered therefrom.
- (iii) In the case of unaided institutions, maximum autonomy has to be conceded as contradistinguished from the power of the State to exercise more control over unaided institutions but even in relation thereto, aided institutions should not be treated to be wholly owned or controlled by the State or their Departments. (Paras 55, 61, 62 & 72)

(iv) Such a right of control over the aided institutions inheres for the purpose of oversight and restraints so as to

(a) ensure proper utilization of funds (Para 143)

(b) permit the Government to have some seats to the extent of its reservation policy (Paras 42-44).

(v) Although the ~~aided~~ institutions are subject to clause (2) of Article 29 and clause (3) of Article 28 of the Constitution, but the unaided minority institutions being not so subject would not be bound by the restraints emanating therefrom so long they exercise their right to admit and select students in a transparent and non-arbitrary manner;

### III ON ADMISSION OF STUDENTS BY UNAIDED INSTITUTIONS

(i) Unaided institutions have an unbridled right on admission of students, comprising of devising a test for selecting students of their choice (Para 36, 40-41, 50). Such a right emanates from the principle that every private and public owner of an institution has the power to admit qualified students of their own choice (Para 42-44).

(ii) As such a right also emanates with a view to maintain the atmosphere and traditions of the private educational institutions, the general principles for unaided institutions would also apply to unaided professional institutions. The right of option either to select their candidates from the Government CET test or its own test is absolute and the ultimate decision in this behalf rests with the institutions whereas aided institutions can be compelled to follow the CET test devised by the Government or the University.

(iii) Whereas such a test and devising a system on the part of the unaided institutions cannot be based on fancy and whims but once "some identifiable or reasonable methodology" usually on merit is adopted, the right to select qualified students on a fair and discernable basis cannot be interfered with (Para 65).

#### IV ON THE NATURE AND EXTENT OF THE GOVERNMENT QUOTA FOR UNAIDED INSTITUTIONS

(i) It is contended that the Government cannot have a quota in this regard as the institutions are unaided. Having regard to the fact that if such government quota is allowed, the same would destroy not only the concept of unaided institutions but right to exercise

maximum autonomy especially in the matter of selection of students and fees would be impaired.

(ii) Such a right must be construed having regard to the extent of control over the aided institution.

(iii) Admission to a small percentage for weaker sections which the unaided institutions are required to follow by way of implication rules out enforcement of any reservation policy of the State as the same would run counter to the decision of this Court in The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another [(1974) 1 SCC 717].

(iv) In any event, the direction to determine a small percentage of persons drawn from the weaker sections of the society should be left with the management, which would include the weaker sections of the minority community for which such institution has been established.

(v) It is for an unaided institution to volunteer to provide scholarship or freeship to the students of weaker sections so long they are meritorious students (Para 37, 53, 61 & 68)

(vi) Since weaker sections form a special category, they cannot be selected either on the basis of :

(a) reservation policy of the State

(b) regional affiliation or residence within the State

(c) religion.

- (vii) For the said purpose also, the social and educational backwardness of the area or the regions entitling such inclusion on the touchstone of compelling necessities of the State will have to be taken into consideration.
- (viii) In any event, reservation for weaker sections cannot be greater than 50% of the total in any batch after taking into account the reservation for SC, ST and OBC.
- (ix) The unaided institutions cannot be subject to onerous financial impositions nor can they be asked to perform the functions of the State. (Para 61)
- (x) In any event, the quota policy cannot be imposed on unaided institutions to the extent of laying down standards of a reasonable nature that do not cut down its operational autonomy and financial independence. (Paras 36, 40, 43, 53, 59, 65).

#### V. FEE FIXATION FOR UNAIDED INSTITUTIONS

As unaided institutions are to be given maximum autonomy in the matter of fixation of fee, there cannot be :

- (a) a rigid fee structure (para 54)
- (b) Such fees are to be fixed by the unaided institutions (Para 56, 57).
- (c) The only impediment in this behalf is that no capitation fee can be charged nor the

institutions can take recourse to profiteering since education is charitable in nature. Therefore a reasonable revenue surplus for the purpose of development of education and expansion of education would be permissible (Para 57). While restricting charging the capitation fee and profiteering, this Court had merely directed that such institutions make no undue, excessive or illegal profits and thereby a reasonable profit is permitted.

- (d) Only because fee is to be charged on a reasonable development profit basis, the same would not result in decline in standard or amount to capitation. (Para 61).
- (e) Students of weaker sections when admitted may be granted freeships and scholarships (Para 53).
- (f) For the purpose of finding out as to who would be the students belonging to the weaker sections of the community, local needs and other needs must be taken into consideration.

The judgment of this Court in T.M.A. Pai Foundation (supra) is to be construed having regard to the following principles:

- (a) Its ratio must be found in the answers ultimately given.

- (b) A judgment has to be read as a whole and in such a manner so that all parts of a judgment dealing with a particular point are provided with a meaning. The regulations imposing restrictions must be read in such a fashion so that maximum autonomy of the unaided institutions are preserved and respected.

SUBMISSIONS MADE ON BEHALF OF STATES/CENTRAL GOVERNMENT/STATUTORY AUTHORITIES

- (i) The right of citizens including the minority communities whether based on any religion or language contained in Article 19(1)(g) and Article 30(1) is not absolute but is subject to reasonable restrictions.
- (ii) Regulations restricting the right of minority to admission of students are necessary for maintenance of proper academic standards, atmosphere and infrastructure (including qualified staff) and for prevention of mal-administration (Para 54).
- (iii) Since education in a sense is regarded as charitable, unaided institutions cannot charge a hefty fee which would not be required for the purpose of fulfilling the object for which the institutions are established nor by reason thereof they can take recourse to profiteering (Para 57.)



- (iv) As merit is usually determined by either the marks of the students obtained at the qualifying examination or school leaving certificate stage followed by the interview or by a common entrance test conducted by the institution, the State while framing regulation has the requisite jurisdiction to issue necessary directions in this behalf so that merit is not sacrificed (Para 58-59).
- (v) The plea of the minority institutions to the effect that their right to admit or reject students is absolute would not be in consonance with the direction issued in para 68 which provides for
- (a) a system to provide merit based selection while granting sufficient discretion to the management
  - (b) As certain percentage of seats have to be reserved for the management, the rest can be filled up on the basis of counseling by the State agencies which would take care of poorer and backward sections of the society. The prescription of the percentage for the said purpose must be left with the State (Para 68).
- (vi) Professional institutions must apply a more rigorous test, which would be subject to greater regulation by the State or by the University. (Answer to Question No. 4).

- (vii) As the State while granting essentiality certificate is to consider the local needs and further guarantee smooth functioning of such institutions failing which the State has to adjust the students of the institutions to their own institutions, it has a great stake in the matter. Choice and selection of students in professional courses are directly linked with maintaining the standards of medical education.
- (viii) If a free hand is given to all the private medical, dental, engineering and other professional colleges to hold their own test, having regard to the time schedule framed by this Court for holding examinations in the 15% All India quota as also the All India test held by AIIMS, CBSE, JIPMER, AFMC etc. the students would be deprived from appearing at the examinations if tests are held throughout the country and they will have to incur huge expenditure for purchasing application forms which are priced at Rs. 500 to Rs. 1000/- as also by way of travelling, boarding and lodging so as to enable them to appear at various examinations. More than one examination may be held on the same day or in such near proximity that traveling from one place to another would become virtually impossible. The methodology, thus, must be adopted so as to minimize the inconvenience caused to a majority of the students

so that they can appear at many examinations by incurring a reasonable expenditure.

- (ix) It is a common knowledge that although not termed as capitation fee a large number of unaided institutions are selling their seats, which must not be allowed to continue, and must be curbed with heavy hands.
- (x) In pursuit of its objective of State Policy having regard to Articles 38, 41 & 46 which are in terms of Article 37 thereof, which are fundamental in governance of the country it is necessary to provide for a common examination so that the rights of the inter se minorities and inter se weaker sections can be taken care of in terms of para 68 of the judgment.
- (xi) The directions issued by this Court to unaided professional institutions contained in paras 67 and 68 only are to be given effect to although the Bench referred to professional colleges also in paras 58 and 59 of the judgment.

#### OVERVIEW OF THE JUDGMENT IN T.M.A. PAI FOUNDATION :

The right to establish an institution is provided for in Article 19(1)(g) of the Constitution of India. Such a

right, however, is subject to reasonable restrictions, which may be brought about in terms of Clause (6) thereof.

Minorities whether based on religion or language, however, have a fundamental right to establish and administer educational institutions of their own choice. The right under clause (1) of Article 30 is not absolute; and subject to reasonable regulations while inter alia may be framed having regard to the public interest and national interest of the country. Regulations can also be framed to prevent maladministration as also for laying down the standard of education, teaching, maintenance of discipline, public order, health, morality, etc.

UNNI KRISHNANAN, J.P.

This Court in Unni Krishnan (supra) while framing the scheme directed :

- (a) that a professional college should be established and/or administered only by a Society registered under the Societies Registration Act, 1860. or the corresponding Act of a State, or by a Public Trust registered under the Trusts Act, or under the Wakfs Act, and that no individual, firm, company or other body of individuals would be permitted to

establish and/or administer a professional college.

- (b) that 50% of the seats in every professional college should be filled by the nominees of the Government or University, selected on the basis of merit determined by a common entrance examination, which will be referred to as "free seats"; the remaining 50% seats ("payment seats") should be filled by those candidates who pay the fee prescribed therefor, and the allotment of students against payment seats should be done on the basis of *inter se* merit determined on the same basis as in the case of free seats.
- (c) that there should be no quota reserved for the management or for any family, caste or community, which may have established such a college.
- (d) that it should be open to the professional college to provide for reservation of seats for constitutionally permissible classes with the approval of the affiliating university.
- (e) that the fee chargeable in each professional college should be subject to such a ceiling as may be prescribed by the appropriate authority or by a competent court.

- (f) that every State government should constitute a committee to fix the ceiling on the fees chargeable by a professional college or class of professional colleges, as the case may be. This committee should, after hearing the professional colleges, fix the fee once every three years or at such longer intervals, as it may think appropriate.
- (g) that it would be appropriate for the University Grants Commission to frame regulations under its Act regulating the fees that the affiliated colleges operating on a no grant-in-aid basis were entitled to charge. The AICTE, the Indian Medical Council and the Central Government were also given similar advice. The manner in which the seats to be filled on the basis of the common entrance test was also indicated.

In T.M.A. Pai Foundation (supra) the Scheme framed by this Court restricting the right of the citizen to establish private unaided institutions including minority institutions and manage the same was held to be unconstitutional stating : (1) The Scheme enforced by the State Governments in relation to privately managed institutions would not be a reasonable restriction within the meaning of Article 19(6) of the Constitution of India as it resulted into revenue

shortfalls making it difficult for the educational institutions; (2) the provision made for free seats and payment seats amounted to subsidising education of one segment of society at the cost of other which was unreasonable having regard to the fact that higher education has been held not to be a fundamental right.

All orders and directions issued by the State pursuant to or in furtherance of the directions in Unnikrishnan are, thus, also unconstitutional.

ST. STEPHEN'S COLLEGE :

The right of a minority educational institution to adopt its own method of selection is subject to the restrictions contained in clause (2) of Article 29 of the Constitution of India, if the institution is an aided one. It was held that allowing minority educational institutions to select its own method of selection for admission of students to the extent of 50% of the seats would not impinge upon the right under Article 30 of the Constitution of India. It was further held that regulations can be imposed by the State for intake of minority categories with regard to need of the minority in the area which the institution intends to serve.

A question, however, arose therein as to whether the State could impose regulatory measures on the institutions

run by the minority community which provides for admission by conducting interviews but not solely on the marks obtained in the qualifying examination? In that case, the State had imposed restrictions on the college management compelling it to make admission exclusively on the basis of marks obtained in the qualifying examination. But the management, in addition to the marks obtained by the students, also conducted interviews for making admission to the college. This Court observed that the denial of power to St. Stephen's College to conduct interviews to select candidates for admission would be violative of the rights of the minority community guaranteed under Article 30(1) of the Constitution. It was held that, any regulatory measure imposed by the State on the minority institutions should be beneficial to the institution or for the betterment of those who join such institutions.

In T.M.A. Pai Foundation (supra) while upholding the judgment in St. Stephen (supra), that part of the direction whereby the right of the minority institutions were confined to 50% of the seats was held to be bad.

From the above decisions of this Court, it is evident that though the right engrafted under Article 30(1) of the Constitution does not lay down any limitations or restrictions upon the right of a minority to administer its educational institutions, yet the right cannot be used absolutely and unreasonably.



QUESTIONS POSED IN T.M.A. PAI FOUNDATION :

In T.M.A. Pai Foundation (supra), the Bench framed the following questions:

1. What is the meaning and content of the expression "minorities" in Article 30 of the Constitution of India?

2. What is meant by the expression "religion" in Article 30(1)? Can the followers of a sect or denomination of a particular religion claim protection under Article 30(1) on the basis that they constitute a minority in the State, even though the followers of that religion are in minority in that State?

3. (a) What are the indicia for treating an educational institution as a minority educational institution? Would an institution be regarded as a minority educational institution because it was established by a person(s) belonging to a religious or linguistic minority or its being administered by a person(s) belonging to a religious or linguistic minority?

(b) To what extent can professional education be treated as a matter coming under minorities' rights under Article 30?

4. Whether the admission of students to minority educational institution, whether aided or unaided, can be regulated by the State Government or by the university to which the institution is affiliated?

5. (a) Whether the minorities' rights to establish and administer educational institutions of their choice will include the procedure and method of admission and selection of students?

(b) Whether the minority institutions' right of admission of students and to lay down procedure and method of admission, if any, would be affected in any way by the receipt of State aid?

(c) Whether the statutory provisions which regulate the facets of administration like control over educational agencies, control over governing bodies, conditions of affiliation including recognition/withdrawal thereof, and appointment of staff, employees, teachers and principals including their service conditions and regulation of fees, etc. would interfere with the right of administration of minorities?

6. (a) Where can a minority institution be operationally located? Where a religious or linguistic minority in State 'A' establishes an educational institution in the said State, can such educational institution grant preferential admission/ reservations and other benefits to members of the religious/linguistic group from other States where they are non-minorities?

(b) Whether it would be correct to say that only the members of that minority residing in State 'A' will be treated as the members of the minority vis-à-vis such institution?

7. Whether the member of a linguistic non-minority in one State can establish a trust/society in another State and claim minority status in that State?

8. Whether the ratio laid down by this Court in St. Stephen's case (St. Stephen's College v. University of Delhi) is correct? If no, what order?

9. Whether the decision of this Court in Unni Krishnan, J.P. v. State of A. P. (except where it holds that primary education is a fundamental right) and the scheme framed thereunder require reconsideration/modification and if yes, what?

The Bench did not answer 4 out of 11 questions. The Hon'ble Chief Justice, B.N. Kirpal delivering the majority judgment considered the questions answered by the Bench under the following headings:

1. Is there a fundamental right to set up educational institutions and if so, under which provision?
2. Does the judgment in Unni Krishnan case require reconsideration?
3. In case of private unaided institutions can there be government regulations and if so to what extent?
4. In determining the existence of a religious or linguistic minority, in relation to Article 30, what is to be the unit, the State or country as a whole? and
5. To what extent can the rights of aided minority institutions to administer be regulated?

We are not concerned with the subject under heading 1. The core issues in this matter revolve around headings 2, 3 and 5 aforementioned.

We are, thus, concerned in this case with Question No. 3(b), 4, 5(a), 5(b), 5(c) and 9.

The answers to the relevant questions are in the following terms:

A.3(b) Article 30(1) gives religious and linguistic minorities the right to establish and administer educational institutions of their choice. The use of the words "of their choice" indicates that even professional educational institutions would be covered by Article 30.

A.4 Admission of students to unaided minority educational institutions, viz., schools and undergraduate colleges where the scope for merit-based selection is practically nil, cannot be regulated by the State or University concerned, except for providing the qualifications and minimum conditions of eligibility in the interest of academic standards.

The right to admit students being an essential facet of the right to administer educational institutions of their choice, as contemplated under Article 30 of the Constitution, the state government or the university may not be entitled to interfere with that right, so long as the admission to the unaided educational institutions is on a transparent basis and the merit is adequately taken care of. The right to administer, not being absolute, there could be regulatory measures for ensuring educational standards and maintaining excellence thereof, and it is more so in the matter of admissions to professional institutions.

A minority institution does not cease to be so, the moment grant-in-aid is received by the institution. An aided minority educational institution, therefore, would be entitled to have the right of admission of students belonging to the minority group and at the same time, would be required to admit a reasonable extent of non-minority students, so that the rights under Article 30(1) are not substantially

impaired and further the citizens' rights under Article 29(2) are not infringed. What would be a reasonable extent, would vary from the types of institution, the courses of education for which admission is being sought and other factors like educational needs. The State Government concerned has to notify the percentage of the non-minority students to be admitted in the light of the above observations. Observance of inter se merit amongst the applicants belonging to the minority group could be ensured. In the case of aided professional institutions, it can also be stipulated that passing of the common entrance test held by the state agency is necessary to seek admission. As regards non-minority students who are eligible to seek admission for the remaining seats, admission should normally be on the basis of the common entrance test held by the state agency followed by counselling wherever it exists.

A.5(a) A minority institution may have its own procedure and method of admission as well as selection of students, but such a procedure must be fair and transparent, and the selection of students in professional and higher education colleges should be on the basis of merit. The procedure adopted or selection made should not be tantamount to mal-administration. Even an unaided minority institution ought not to ignore the merit of the students for admission, while exercising its right to admit students to the colleges aforesaid, as in that event, the institution will fail to achieve excellence.

A.5(b) While giving aid to professional institutions, it would be permissible for the authority giving aid to prescribe bye-rules or regulations, the conditions on the basis of which admission will be granted to different aided colleges by virtue of merit, coupled with the reservation policy of the state qua non-minority students. The merit may be determined either through a

common entrance test conducted by the University or the Government concerned followed by counselling, or on the basis of an entrance test conducted by individual institutions - the method to be followed is for the university or the government to decide. The authority may also devise other means to ensure that admission is granted to an aided professional institution on the basis of merit. In the case of such institutions, it will be permissible for the government or the university to provide that consideration should be shown to the weaker sections of the society.

A.5(c) So far as the statutory provisions regulating the facets of administration are concerned, in case of an unaided minority educational institution, the regulatory measure of control should be minimal and the conditions of recognition as well as the conditions of affiliation to an university or board have to be complied with, but in the matter of day-to-day management, like the appointment of staff, teaching and non-teaching, and administrative control over them, the management should have the freedom and there should not be any external controlling agency. However, a rational procedure for the selection of teaching staff and for taking disciplinary action has to be evolved by the management itself.

For redressing the grievances of employees of aided and unaided institutions who are subjected to punishment or termination from service, a mechanism will have to be evolved, and in our opinion, appropriate tribunals could be constituted, and till then, such tribunals could be presided over by a Judicial Officer of the rank of District Judge.

The State or other controlling authorities, however, can always prescribe the minimum qualification, experience and other conditions bearing on the merit of an individual for being

appointed as a teacher or a principal of any educational institution.

Regulations can be framed governing service conditions for teaching and other staff for whom aid is provided by the State, without interfering with the overall administrative control of the management over the staff.

Fees to be charged by unaided institutions cannot be regulated but no institution should charge capitation fee.

A.9 The scheme framed by this Court in Unni Krishnan case and the direction to impose the same, except where it holds that primary education is a fundamental right, is unconstitutional. However, the principle that there should not be capitation fee or profiteering is correct. Reasonable surplus to meet cost of expansion and augmentation of facilities does not, however, amount to profiteering.

The conflict has to be resolved keeping the aforementioned findings in view.

#### CORE QUESTIONS :

- (i) Whether unaided professional institutions are entitled to lay down their own fee structure?
- (ii) Whether in view of the judgment of this Court in T.M.A. Pai Foundation (supra) private and unaided professional institutions are entitled to have their own admission programme?

(iii) Whether the State Governments are entitled to lay down the quota of total seats to be filled up by the management?

RELEVANT FINDINGS OF THIS COURT IN T.M.A. PAI FOUNDATION

The right to establish and administer educational institutions was held to be guaranteed to citizens under Article 19(1)(g) of the Constitution of India and to the minorities under Article 30.

One of us (Chief Justice Khare) while agreeing with the majority delivered a separate opinion relating to aided minority institutions and non-minority institutions as also interpretation of the right of the minorities under Clause (1) of Article 30 vis-à-vis clause (2) of Article 29 and held that such right is limited by the conditions laid down in clause (2) of Article 29 and clause (3) of Article 28.

Quadri, J. agreed with the aforementioned view stating:

"259. In regard to the minorities seeking recognition and/or aid it was observed in Kerala Education Bill, 1957 (AIR 1958 SC 956 : 1959 SCR 995) that the minorities cannot surely ask for aid or recognition for an educational institution run by them in unhealthy surroundings, without any competent teachers, possessing any semblance of qualification, and which does not maintain even a fair standard of teaching or which teaches matters



subversive of the welfare of the scholars. In such matters, "the State can insist that in order to grant aid the State may prescribe reasonable regulations to ensure the excellence of the institutions to be aided", (emphasis supplied) Thus, it is clear that regulations postulated for granting recognition or aid ought to be with regard to the excellence of education and efficiency of administration viz. to make certain healthy surroundings for the institutions, existence of competent teachers possessing requisite qualifications and maintaining fair standard of teaching. Such regulations are not restrictions on the right but merely deal with the aspects of proper administration of an educational institution, to ensure excellence of education and to avert maladministration in minority educational institutions and will, therefore, be permissible. This is on the principle that when the Constitution confers a right, any regulation framed by the State in that behalf should be to facilitate exercise of that right and not to frustrate it."

Pal, J. also agreed with the said view stating:

"Similarly, the Constitution has also carved out a further exception to Article 29(2) in the form of Article 30(1) by recognising the rights of special classes in the form of minorities based on language or religion to establish and administer educational institutions of their choice. The right of the minorities under Article 30(1) does not operate as discrimination against other citizens only on the ground of religion or language. The reason for such classification is not only religion or language per se but minorities based on religion and language. Although, it is not necessary to justify a classification made by the Constitution, this fact of

'minorityship' is the obvious rationale for making a distinction, the underlying assumption being that minorities by their very numbers are in a politically disadvantaged situation and require special protection at least in the field of education.

Articles 15(4), 337 and 30 are therefore facets of substantive equality by making special provision for special classes on special considerations."

One of us (Variava, J.) speaking for himself and Bhan, J. agreed with the majority but thought it appropriate that a mechanism therefor should be set up observing:

"So far as the statutory provisions regulating the facets of administration are concerned, in case of an unaided minority educational institution, the regulatory measure of control should be minimal and the conditions of recognition as well as conditions of affiliation to a University or Board have to be complied with, but in the matter of day-to-day Management, like appointment of staff, teaching and non-teaching and administrative control over them, the Management should have the freedom and there should not be any external controlling agency. However, a rational procedure for selection of teaching staff and for taking disciplinary action has to be evolved by the Management itself. For redressing the grievances of such employees who are subjected to punishment or termination from service, a mechanism will have to be evolved and in our opinion, appropriate tribunals could be constituted, and till then, such tribunal could be presided over by a Judicial Officer of the rank of District Judge. The State or other controlling authorities, however, can always

prescribe the minimum qualifications, salaries, experience and other conditions bearing on the merit of an individual for being appointed as a teacher of an educational institution.

Regulations can be framed governing service conditions for teaching and other staff for whom aid is provided by the State without interfering with overall administrative control of Management over the staff. Government/University representative can be associated with the selection committee and the guidelines for selection can be laid down. In regard to un-aided minority educational institutions such regulations, which will ensure a check over unfair practices and general welfare, of teachers could be framed.

There could be appropriate mechanism to ensure that no capitation fee is charged and profiteering is not resorted to.

The extent of regulations will not be the same for aided and un-aided institutions."

The majority held that there is an apparent conflict between the provisions of clause (2) of Article 29 and clause (1) of Article 30. Article 29 guarantees the right to every citizen not to be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them; whereas clause (1) of Article 30 confers a fundamental right to set up educational institutions of their choice.

A delicate balance was sought to be struck by stipulating that minority educational institutions may admit non-minority students to a "reasonable extent" so that the rights of both minorities and non-minorities are protected. However, the extent to which such balance is to be struck may be determined by the State having regard to such factors as 'the type of institution', 'course of education', 'population and educational needs of minorities'. It was further laid down that the minority institutions are required to admit students having regard to inter-se merit amongst the applicants. Non-minorities students, who qualify the test, would be entitled to seek admission against the "allotted seats" as per their own respective cumulative merit.

However, one of us Variava, J., speaking for himself and Bhan, J. clearly held that where the minority institutions take aid from the State they do not have any right to admit students of minority community alone. For arriving at the said conclusion, the learned Judge referred to the history of the said provision and the intention of the founding fathers, which was the conferment of a right of minorities to establish "a secular state wherein people belonging to the different religions should all have a feeling of equality and non-discrimination".

The learned Judge further referred to the significance of conditional clause, 'at their own expense' in the draft article VI which reads as follows :

"Citizens belonging to national minorities in a state whether based on religion or language have equal rights with other citizens in forming, controlling and administering at their own expense, charitable, religious and social institutions, schools and other educational establishments with the free use of their language and practice of their religion.

No legislation providing state-aid for schools shall discriminate against schools under the management of minorities whether based on religion or language."

The learned Judge further observed that by reason of Article 30(1) no 'special' or 'additional' right is conferred on the minorities.

Expression 'minorities' although is not defined in the Constitution, one of us Khare, CJI, referred to the Year Book on Human Rights (1950) and Encyclopaedia Britannica and some other standard works on the theme of protection of minorities.

Though in para 153 the view regarding merit was expressed, but while answering the question No. 7 was left open to be answered by the appropriate Benches.

The majority opined that the minority status of a group of persons would be determined on the basis of population of the State or Union Territory concerned and not on the whole of the country. It was further held that education within the meaning of the provision of Article 30 would mean and include education from primary level to the post-graduate level and would include professional education as well.

The 'Bench, however, overruled the dicta in Unni Krishnan's case (supra) that education is not a 'business' or 'occupation' within the meaning of Article 19(1)(g) of the Constitution of India, wherein referring to State of Bombay Vs. R.M.D. Chamarbaugwala [1957 SCR 874] and incorporating the doctrine of *res extra commercium*, the Court had observed :

"While the conclusion that 'occupation' comprehends the establishment of educational institutions is correct, the proviso in the aforesaid observation to the effect that this is so provided no recognition is sought from the state or affiliation from the concerned university is, with the utmost respect, erroneous. The fundamental right to establish an educational institution cannot be confused with the right to ask for recognition or affiliation."

While declaring that the Scheme framed in Unni Krishnan's case (supra) and the directions issued to the Government, UGC and other concerned bodies to give effect to the same vis-à-vis privately managed educational institutions as unconstitutional, it upheld two propositions : (1) primary education is a fundamental right; and (2) the institution cannot charge any capitation fee or otherwise take recourse to profiteering.

It was observed :

"The scheme framed by this Court in Unni Krishnan's case and the direction to impose the same, except where it holds that primary education is a fundamental right, is unconstitutional. However, the principle that there should not be capitation fee or profiteering is correct. Reasonable surplus to meet cost of expansion and augmentation of facilities does not, however, amount to profiteering."

The Bench agreed with the contention of the private institutions that affiliation and recognition has to be made available to every institution that fulfils the conditions for grant thereof observing :

"The private institutions are right in submitting that it is not open to the Court to insist that statutory authorities should impose the terms of the scheme as a condition for grant of affiliation or recognition; this completely destroys the institutional

autonomy and the very objective of the institution."

The Court, however, laid emphasis that in professional education merit should be the criteria.

With a view to appreciate the extent to which the Scheme formulated in Unni Krishnan was not found favour with T.M.A. Pai Foundation (supra), we may set out the observations of this Court in T.M.A. Pai Foundation (supra) as follows:

#### 1. Establishment of Educational Institutions

All citizens have a right to establish and administer educational institutions under Articles 19(1)(g) and 26, but this right is subject to provisions of Articles 19(6) and 26-A. (See Answer to Question Nos. 10 & 11).

#### 2. Admission to Courses

##### (i) Private Unaided Professional Colleges:

(a) Admission to professional colleges should be based on merit by common entrance test conducted by the Government agencies (See Paragraph 59)

(b) Certain percentage of seats can be reserved for admission by management out of those students who have passed common entrance test held by itself or by the State agency and the rest of the seats may



be filled up on the basis of counselling by the State agency. Prescription by percentage has to be determined by the Government according to local needs (See Paragraph 68)

- (c) When one considers the Constitution Bench's earlier statements that higher education is not a fundamental right, it seems unreasonable to compel a citizen to pay for the education of another more so in the unrealistic world of competitive examinations which assess the merit for the purpose of admission solely on the basis of marks obtained where urban students always have an edge over rural students. Those who seek professional education must pay for it. (See Paragraphs 37 & 70).

2(ii) Private aided professional institutions:

It would be permissible for the authority giving aid to prescribe by Rules or Regulations the conditions on the basis of which the admissions shall be granted to different aided colleges by virtue of merit coupled with reservation policy of the State. The merit may be determined either through the common entrance test conducted by the University or the Government followed by counselling or on the basis of entrance test conducted by individual institution, and method to be followed is for the Government or University to decide.

## 2. (iii) Private aided minority institutions:-

The State Government is not entitled to interfere with the right of minority educational institutions to admit students of their choice so long as the admission is on a transparent basis and the merit is adequately taken care of. The right not being absolute, there could be regulatory measures for ensuring educational standards and maintaining excellency thereof, specially in the case of admission to professional institutions. (See Page 588, Q. 4).

## 2(iv.) Unaided minority institutions:

Such institutions would have the right of admission of students belonging to minority groups and at the same time would be required to admit reasonable extent of non-minority students as notified by the State Government. In case of professional institutions it can also be stipulated that passing of common entrance test held by the State agency is necessary to seek admission. (Page 588, Qs. 4, 5(a) and 5(b))

## 3. Reservation of Seats

..While the State has a right to prescribe qualifications necessary for admission, private unaided colleges have right to admit students of their choice subject to objective and rational procedure of selection and the compliance with the conditions if any requiring

admission of certain percentage of students belonging to weaker sections by granting them free scholarships or scholarships if not granted by the Government (paragraph 53).

#### 4. Fee Structure

(i) ..Scheme of "free" and "Payment" seats was evolved on the presumption that the economic capacity of the 50 per cent of admitted students would be greater than the remaining 50%, whereas the converse has proved to be the reality. In this scheme, the "Payment" seat student would not only pay for his own seat, but also finance the cost of a "free seat" classmate. It seems unreasonable to compel a citizen to pay for the education of another, more so in the unrealistic world of competitive examinations which assess the merit for the purpose of admission solely on the basis of marks obtained where urban students always have an edge over rural students. In practice, it has been the case of the marginally less merited rural or poor students bearing the burden of a rich and well exposed and urban students. (See Paragraph 37).

(ii) The decision in Unni Krishnan insofar as it framed the Scheme relating to grant of admission and fixing fee was not correct, and to that extent the said decision and consequent direction given to UGC, AICTE, Medical Council of

India, Central and State Governments etc., is overruled. (Paragraph 45).

(iii) A rational fee structure should be adopted by the management and it would not be entitled to charge capitation fee and appropriate machinery can be devised by the State or University to ensure that no capitation fee is charged and that there is no profiteering, though a reasonable surplus in furtherance of education is permissible. The conditions of granting recognition or affiliation can broadly cover academic and educational matters including the welfare of students and teachers (Paragraph 69, Q.9).

The problem presented in these matters should be viewed from the aforementioned perspective.

There is a fundamental right to set up educational institutions both under Article 19(1)(g) and Article 30 of the Constitution of India. It held that the Scheme framed by this Court in Unni Krishnan did not impose reasonable restrictions within the meaning of Clause (6) of Article 19 of the Constitution of India. The unaided institutions compared to the aided institutions will have more autonomy to run the institutions. However, in the matter of non-professional institutions, the autonomy is absolute which is not the case in professional institutions.

The right to establish and administer an institution comprises of the right:

- (a) to admit students;
- (b) to set up a reasonable fee structure;
- (c) to constitute a governing body;
- (d) to appoint staff (teaching and non-teaching); and
- (e) to take action if there is dereliction of duty on the part of any employees.

As regards fee structure, it was held that the fixing of a rigid fee structure, dictating the formation and composition of a governing body, compulsory nomination of teachers and staff for appointment or nominating students for admissions would be unacceptable restrictions. Although an educational institution is not a business, in order to examine the degree of independence that can be given to a recognized educational institution, like any private entity that does not seek aid or assistance from the Government, and that exists by virtue of the funds generated by it, including its loans or borrowings. It is important to note that the essential ingredients of the management of the private institution include the admission of students and recruiting staff, and the quantum of fee that is to be charged.

An educational institution is established for the purpose of imparting education of the type made available by the institution. Different courses of studies are usually taught by teachers who have to be recruited as per qualifications that may be prescribed. It is no secret that better working conditions will attract better teachers. More amenities will ensure that better students seek admission to that institution. One cannot lose sight of the fact that providing good amenities to the students in the form of competent teaching faculty and other infrastructure costs money. It has, therefore, to be left to the institution, if it chooses not to seek any aid from the government, to determine the scale of fee that it can charge from the students. One also cannot lose sight of the fact that we live in a competitive world today, where professional education is in demand. We have been given to understand that a large number of professional and other institutions have been started by private parties who do not seek any governmental aid. In a sense, a prospective student has various options open to him/her where, therefore, normally economic forces have a role to play. The decision on the fee to be charged must necessarily be left to the private educational institution that does not seek or is not dependent upon any funds from the Government.

Since the object of setting up of an educational institution is charitable in nature, capitation fee and profiteering cannot be allowed to be indulged in:

- (a) although the institutions may generate a reasonable revenue surplus for the purpose of development of education and expansion of the institutions.
- (b) For admission in a professional institutions, merit must play an important role and meritorious candidates should not be treated unfairly or put at a disadvantage by preferences shown to less meritorious but more influential applicants.

Excellence in professional education would require that greater emphasis be laid on the merit of a student seeking admission for which appropriate regulations can be made.

As regards determination of merit, it was stated:

"Merit is usually determined, for admission to professional and higher education colleges, by either the marks that the student obtains at the qualifying examination or school leaving certificate stage followed by the interview, or by a common entrance test conducted by the institution, or in the case of professional colleges, by government agencies."

Educational institutions, however, cannot grant admission on their whims and fancies and must follow some identifiable or reasonable methodology of admitting the

students. Any scheme, rule or regulation that does not give an institution the right to reject candidates who might otherwise be qualified according to, say, their performance in an entrance test, would be an unreasonable restriction under Article 19(6), though appropriate guidelines/modalities can be prescribed for holding the entrance test in a fair manner. Even when students are required to be selected on the basis of merit, the ultimate decision to grant admission to the students who have otherwise qualified for the grant of admission must be left with the educational institution concerned. However, when the institution rejects some students, such rejection must not be whimsical or for extraneous reasons.

The principles governing private unaided professional colleges were dealt with separately in paragraphs 67, 68 and 69; the relevant portions whereof read thus:

"It would be unfair to apply the same rules and regulations regulating admission to both aided and unaided professional institutions. It must be borne in mind that unaided professional institutions are entitled to autonomy in their administration while, at the same time, they do not forgo or discard the principle of merit. It would, therefore, be permissible for the university or the government, at the time of granting recognition, to require a private unaided institution to provide for merit-based selection while, at the same time, giving the Management sufficient discretion in admitting students. This can be done through various methods. For



instance, a certain percentage of the seats can be reserved for admission by the Management out of those students who have passed the common entrance test held by itself or by the State/University and have applied to the college concerned for admission, while the rest of the seats may be filled up on the basis of counselling by the state agency. This will incidentally take care of poorer and backward sections of the society. The prescription of percentage for this purpose has to be done by the government according to the local needs and different percentages can be fixed for minority unaided and non-minority unaided and professional colleges. The same principles may be applied to other non-professional but unaided educational institutions viz., graduation and post graduation non-professional colleges or institutes.

In such professional unaided institutions, the Management will have the right to select teachers as per the qualifications and eligibility conditions laid down by the State/University subject to adoption of a rational procedure of selection. A rational fee structure should be adopted by the Management, which would not be entitled to charge a capitation fee. Appropriate machinery can be devised by the state or university to ensure that no capitation fee is charged and that there is no profiteering, though a reasonable surplus for the furtherance of education is permissible. Conditions granting recognition or affiliation can broadly cover academic and educational matters including the welfare of students and teachers.

#### STATUTES OPERATING IN THE FIELD:

The Parliament in exercise of its power conferred upon it under Entry 66 List I of the Seventh Schedule of the

Constitution of India enacted the Medical Council of India Act, University Grants Commission Act and All India Council for Technical Education Act. Regulations have also been framed pursuant to or in furtherance of the regulation making power contained therein. Section 10(1)(i) of the AICTE Act reads as under :-

"10. Functions of the Council. -

(1) It shall be the duty of the Council to take all such steps as it may think fit for ensuring co-ordinated and integrated development of technical and management education and maintenance of standards and for the purposes of performing its functions under this Act, the Council may--

(a) undertake survey in the various fields of technical education, collect data on all related matters and make forecast of the needed growth and development in technical education;

(b) co-ordinate the development of technical education in the country at all levels;

(c) allocate and disburse out of the Fund of the Council such grants on such terms and conditions as it may think fit to -

(i) technical institutions"

Section 12A of UGC Act is as follows :

"12A. Regulation of fees and prohibition of donations in certain cases.- (1) In this section, -

- (a) "affiliation", together with its grammatical variations, includes in relation to a college, recognition of such college by, association of such college with, and admission of such college to the privileges of, a University;
- (b) "college" means any institution, whether known as such or by any other name which provides for a course of study for obtaining any qualification from a university and which, in accordance with the rules and regulations of such University, is recognized as competent to provide for such course of study and present students undergoing such course of study for the examination for the award of such qualification;
- (c) "prosecution", in relation to a course of study, includes promotion from one part or stage of the course of study to another part or stage of the course of study;
- (d) "qualification" means a degree or any other qualification awarded by a University;
- (e) "regulations" means regulations made under this Act;
- (f) "specified course of study" means a course of study in respect of which regulations of the nature mentioned in sub-section (2) have been made;

(g) "student" includes a person seeking admission as a student.

(h) "university" means a university or institution referred to in sub-section (1) of section 22.

(2) Without prejudice to the generality of the provisions of section 12 if, having regard to -

(a) the nature of any course of study for obtaining any qualification from any University;

(b) the types of activities in which persons obtaining such qualification are likely to be engaged on the basis of such qualification;

(c) the minimum standards which a person possessing such qualification should be able to maintain in his work relating to such activities and the consequent need for ensuring, so far as may be, that no candidate secures admission to such course of study by reason of economic power and thereby prevents a more meritorious candidate from securing admission to such course of study; and

(d) all other relevant factors,

the Commission is satisfied that it is necessary so to do in the public interest, it may, after consultation with the university or universities concerned, specify by

regulations the matters in respect of which fees may be charged, and the scale of fees in accordance with which fees shall be charged in respect of those matters on and from such date as may be specified in the regulations in this behalf, by any college providing for such course of study from, or in relation to, any student in connection with his admission to, and prosecution of, such course of study :

Provided that different matters and different scales of fees may be so specified in relation to different universities or different classes of colleges or different areas.

(3) Where regulations of the nature referred to in sub-section (2) have been made in relation to any course of study, no college providing for such course of study shall -

- (a) levy or charge fee in respect of any matter other than a matter specified in such regulations;
- (b) levy or charge any fees in excess of the scale of fees specified in such regulations, or
- (c) accept, either directly or indirectly, any payment (otherwise than by way of fees) or any donation or gift (whether in cash or kind),

from, or in relation to, any student in connection with his admission to, and prosecution of, such course of study.

(4) If, after making, in relation to a college providing for a specified course of study, an inquiry in the manner provided by regulations, and after giving such college a reasonable opportunity of being heard, the Commission is satisfied that such college has contravened the provisions of sub-section (3), the Commission may, with the previous approval of the Central Government, pass an order prohibiting such college from presenting any students then undergoing such course of study therein to any university for the award of the qualification concerned.

(5) The Commission shall forward a copy of the order made by it under sub-section (4) to the university concerned, and on and from the date of receipt by the University of a copy of such order, the affiliation of such college to such university shall, in so far as it relates to the course of study specified in such order, stand terminated and on and from the date of termination of such affiliation and for a period of three years thereafter affiliation shall not be granted to such college in relation to such or similar course of study by that or any other university.

(6) On the termination of the affiliation of any college under sub-section (5), the Commission shall take all such steps as it may consider appropriate for safeguarding the interests of the students concerned.

(7) The provisions of this section and the regulations made for the purposes of this section shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force."

Detailed regulations have been framed under the aforementioned three Acts regulating admission of students, percentage of the minority students to be admitted into non-

minority institutions, determination of fee and matters incidental thereto and ancillary therewith. By reason of the said regulations, the State Government, however, have been delegated with the power to determine the fee structure in respect of professional institutions wherefor requisite guidelines have been issued; pursuant whereto and in furtherance whereof committees have been constituted for the said purpose.

The States of Tamil Nadu, Maharashtra, Karnataka and Andhra Pradesh enacted statutes prohibiting collection of capitation fee and regulating admission in professional colleges. In terms of the provisions of the said Acts, the management of the professional colleges is prohibited from charging any fee other than fee determined under the said Acts. The right of the minorities under Article 30 of the Constitution, however, stands protected thereby. The respective State Governments enforced the said statutes in respect of self-financing private institutions, minorities or otherwise. They further issued various Government orders in exercise of their powers under Article 162 of the Constitution of India after the judgment in T.M.A. Pai Foundation. The University Grants Commission, the A.I.C.T.E. and the Medical Council of India, issued provisional/ad hoc guidelines covering the same subject purported to be in terms of the provisions of the principal statutes governing the field in the light of the judgment of

this Court in T.M.A. Pai Foundation. The State Governments also in terms of the observations made by this Court issued various orders or adopted resolutions providing for enforcement of their reservation policy as also determining the fee structure.

Constitutionality of such Government orders came to be challenged, inter alia, by way of writ petition before the High Courts of Andhra Pradesh, Karnataka and Kerala. Certain interim orders had been passed therein which are under challenge in several special leave petitions.

As noticed hereinbefore, in T.M.A. Pai Foundation's case (supra) only orders and directions issued pursuant to Unni Krishnan have been declared unconstitutional.

However, the question with regard to constitutionality or otherwise of the said statutes, Rules and Regulations had not been examined. In particular the parliamentary acts and the regulations framed thereunder have not been referred to. The question as to whether the field with regard to the higher education is covered by the parliamentary legislations or not was not adverted to. The extent and scope of the legislative competence of the Parliament and the State Legislatures within the meaning of Entry 66 of List I and Entry 25 of List III of the Seventh Schedule of the Constitution also had not been adverted to. In the aforementioned premise, one of us, Variava, J. stated :



"393. The learned Chief Justice has repeatedly emphasised that capitation fees cannot be charged and that there must be no profiteering. We clarify that the authorities concerned will always be entitled to prevent by enactment or by regulations the charging of exorbitant fees or capitation fees. There are many such enactments already in force. We have not gone into the validity or otherwise of any such enactment. No arguments regarding the validity of any such enactment have been submitted before us. Thus those enactments will not be deemed to have been set aside by this judgment. Of course now by virtue of this judgment the fee structure fixed under any regulation or enactment will have to be reworked so as to enable educational institutions not only to break even but also to generate some surplus for future development/expansion and to provide for free seats."

Although the parties have raised their contentions as regards constitutionality of some of the provisions of the aforementioned statutes, keeping in view the limited scope for which this Constitution Bench has been constituted, we refrain ourselves from going thereinto. This exercise has to be undertaken in appropriate cases.

ARE THE RIGHTS UNDER ARTICLE 19(1)(g) AND ARTICLE 30(1) OF  
THE CONSTITUTION OF INDIA EQUAL ? :

T.M.A. Pai Foundation (supra) for the first time brought into existence the concept of education as an

'occupation'. In no uncertain terms, it was held that all citizens of India irrespective of the fact as to whether they belong to a minority group or not have a right to establish and run an institution. A right conferred on a citizen of India in terms of Article 19(1)(g) of the Constitution of India indisputably is subject to reasonable restrictions, which may be imposed in public interest under clause (6) thereof. The makers of the Constitution no doubt while enacting Article 30 of the Constitution of India intended to confer on the minorities the same right as that of the majority. But, does it mean that for all intent and purport no further or additional right exists in the minority community is the question.

Drawing our attention to paragraphs 54, 65, 138, 139, 224-229 of the judgment, Mr. Venugopal and Mr. Vaidyanathan, the learned senior counsel for the respondents would submit that the minority right is equal to that of the majority and not vice-versa. According to learned counsel, if it is to be held that the minority exercises a higher right than the majority, the same would be counter productive to the Indian ethos. Right to admit students of their own choice, the learned counsel would contend, in a professional college, therefore, is not absolute.

On the other hand, the learned counsel appearing on behalf of the Writ Petitioners-Applicant would contend that the discussions in T.M.A. Pai Foundation centered round the question as to whether the right conferred upon minorities under Article 30 was subject to clause (2) of Article 29 or not. Our attention was drawn to paragraphs 31 to 45 of the judgment and in particular para 31, 45 and 459 of the judgment. The learned counsel would submit that while considering the question as to whether the Scheme framed by this Court in Unni Krishnan was reasonable, it was categorically held that the provisions contained therein to the extent that 50% seats would be free seats and 50% thereof would be payment seats and all examinations would be conducted through Common Entrance Test (CET) and the ceiling on fees was declared unconstitutional as being violative of clause (6) of Article 19 of the Constitution of India. It was submitted that in the event if it be held that the said provisions are ultra vires for the purpose of clause (6) of the Article 19 the same consequences must ensue for construction of Article 30 of Constitution of India. It was contended that having regard to the majority decision of this Court, if it is held, having regard to clause (2) of Article 29 of the Constitution that in the event an aid is granted to a professional institution, they will be subject to the same restrictions which any other self-financed scheme institution would face in terms of clause (6) of Article 19 of the Constitution of India then no purpose can

be held to have been achieved by the Constitution makers in enacting clause (1) of Article 30 of the Constitution of India.

A citizen of India whether belonging to a minority community or not will have the right under Article 19. A person belonging to a minority community apart from 19(1)(g) has a right to establish, administer institution of their choice. In T.M.A. Pai Foundation this Court held that minority institutions can establish and run a professional institution in terms of clause (1) of Article 30 of the Constitution having regard to the fact that they have a right to establish an institution of their own choice.

A citizen of India with a view to establish an unaided professional institution exercises his right of occupation. To the said extent admittedly the right of the minority and non-minority is equal. Article 30, however, seeks further to protect the minorities so that they may admit students in the institution established by them. This privilege is not extended to the non-minority community. They also have a right to establish an institution and admit students of their own choice in terms of Para 68 of the judgment in T.M.A. Pai but they do not have any right of admitting students belonging to a particular locality or speaking a particular language as such institutions are not meant to serve the said purpose. But the same for all intent and

purport having regard to the question involved in the matter may not be of much consequence as would appear from the discussions made hereinafter.

The Bench held:

"36. The private unaided educational institutions impart education, and that cannot be the reason to take away their choice in matters, *inter alia*, of selection of students and fixation of fees. Affiliation and recognition has to be available to every institution that fulfills the conditions for grant of such affiliation and recognition. The private institutions are right in submitting that it is not open to the Court to insist that statutory authorities should impose the terms of the scheme as a condition for grant of affiliation or recognition; this completely destroys the institutional autonomy and the very objective of establishment of the institution.

The Scheme framed in Unni Krishnan was held to be unconstitutional by this Court and only in that context it was observed:

"38. The scheme in Unni Krishnan's case has the effect of nationalizing education in respect of important features, viz., the right of a private unaided institution to give admission and to fix the fee. By framing this scheme, which has led to the State Governments legislating in conformity with the scheme the private institutions are indistinguishable from the

government institutions; curtailing all the essential features of the right of administration of a private unaided educational institution can neither be called fair nor reasonable. Even in the decision in Unni Krishnan's case, it has been observed by Jeevan Reddy, J., at page 749, para 194, as follows:

"The hard reality that emerges is that private educational institutions are a necessity in the present day context. It is not possible to do without them because the Governments are in no position to meet the demand - particularly in the sector of medical and technical education which call for substantial outlays. While education is one of the most important functions of the Indian State it has no monopoly therein. Private educational institutions - including minority educational institutions - too have a role to play."

However, it was also noticed :

"138. As we look at it, Article 30(1) is a sort of guarantee or assurance to the linguistic and religious minority institutions of their right to establish and administer educational institutions of their choice. Secularism and equality being two of the basic features of the Constitution, Article 30(1) ensures protection to the linguistic and religious minorities, thereby preserving the secularism of the country. Furthermore, the principles of equality must necessarily apply to the enjoyment of such rights. No law can be framed that will discriminate against such minorities with regard to the establishment and administration of educational institutions vis-a-vis other educational institutions. Any law or rule or regulation that would put the educational institutions run by the

minorities at a disadvantage when compared to the institutions run by the others will have to be struck down. At the same time, there also cannot be any reverse discrimination. It was observed in St. Xavier's College case (1975) 1 SCR 173, at page 192, that

*"the whole object of conferring the right on minorities under Article 30 is to ensure that there will be equality between the majority and the minority. If the minorities do not have such special protection, they will be denied equality."*

In other words, the essence of Article 30(1) is to ensure equal treatment between the majority and the minority institutions. No one type or category of institution should be disfavoured or, for that matter, receive more favourable treatment than another. Laws of the land, including rules and regulations, must apply equally to the majority institutions as well as to the minority institutions. The minority institutions must be allowed to do what the non-minority institutions are permitted to do.

139. Like any other private unaided institutions, similar unaided educational institutions administered by linguistic or religious minorities are assured maximum autonomy in relation thereto e.g., method of recruitment of teachers, charging of fees and admission of students. They will have to comply with the conditions of recognition, which cannot be such as to whittle down the right under Article 30."

The findings of this Court in the aforementioned paragraphs must be given their full effect. Although the width and scope of Article 19(1)(g) and Article 30 are different, but they seek to fulfill the same purpose. A

minority institution has no additional rights but it enjoys a constitutional protection to admit students belonging to the minority communities whether based on religion or language. All regulations in this behalf must satisfy the requirement of Article 30. The doctrine of equality shall further apply once the institutions have been established.

We may notice that this Court in Ahmedabad St. Xavier's College (supra) stated:

"In order to attain that object, two things were regarded as particularly necessary and have formed the subject of provisions in these treaties.

The first is to ensure that nationals belonging to racial, religious or linguistic minorities shall be placed in every respect on a footing of perfect equality with the other nationals of the State. The second is to ensure for the minority elements suitable means for the preservation of their racial peculiarities, their traditions and their national characteristics.

These two requirements are indeed closely interlocked, for there would be no true equality between a majority and a minority if the latter were deprived of its own institutions and were consequently compelled to renounce that which constitutes the very essence of its being a minority".

The purpose and object for which Article 30(1) was inserted in the Constitution cannot be lost sight of. Judgments of Khare, J. (as the CJI then was) and Variava, J. are replete with the debates in the constituent assembly.



The argument that the management of the minority institutions cannot be taken over, whereas that of the non-minority institutions can be, is misplaced and in any event irrelevant. This Court in no unmistakable terms held that the State cannot take any step by way of imposing conditions at the time of grant of recognition which would amount to nationalization of education. This applies to both minorities and non-minorities.

The Constitution prohibits acquisition of property of any citizen of India except in accordance with law. Any action taken on the part of the State to take over the property of minority institution must also receive legal sanction through an act of a legislation and not otherwise.

It will not be a correct proposition of law, on the face of Clause 1A of Article 30 of the Constitution to contend that the properties of the minority institutions cannot be taken over at all. The only right which they have is to get reasonable compensation so as to enable them to establish another educational institution at some other place. It is not necessary to raise hypothetical question to drive home a point which is of not much consequence. As and when laws are made, their constitutionality will have to be tested on their own merit. Preemptive answers should not be given on hypothetical questions.

Furthermore, in the event, running of a minority institution is found to be against national interest or permissible limits of regulations, it can be taken over with a view to maintain morality, public order, health, national interest. Similar such considerations would empower the State to close the institution or take over the management thereof, although the same may be done only in extreme cases.

In case of gross mismanagement and violation of the conditions of essentiality certificate also, the State may be held to have the power to close down the institution.

The right of the minority institution to admit their own students, in other words, is only by way of protection of the minority interest so that they may get the benefit of the equality clause. Such a protection should not be confused to be a right. This is evident not only from paras 138 and 139 of the judgment but also from para 371, (opinion of Ruma Pal, J.

The statement of law contained in paras 138 and 139 is absolutely clear and unambiguous and no exception can be taken thereto. The doubt, if any, that the minorities have a higher right in terms of Article 30(1) of the Constitution of India may be dispelled in clearest terms inasmuch as the right of the minorities and non-minorities is equal. Only certain additional protection has been conferred under

Article 30(1) of the Constitution of India to bring the minorities on the same platform as that of non-minorities as regards the right to establish and administer an educational institution for the purpose of imparting education to the members of their own community whether based on religion or language.

Demographically every Indian can become a minority having regard to the fact that even Hindus are in minority in Jammu & Kashmir, Punjab and some other States in North-East of India. Even Hindi speaking people except northern India are in minority in other parts of the country.

The question, thus, has to be considered keeping in view the fact that every Indian may be a minority, either based on religion or language, in one part of the country or the other. The right of a citizen as a minority in one part of the country cannot be higher than his right as a member of majority in another part of the country.

Furthermore, one of us (Variava, J.) speaking for himself and Bhan, J. clearly said:

"Article 30 merely protects the right of the minority to establish and administer an educational institution, i.e. to have the same rights as those enjoyed by majority. Article 30 gives no right to receive State aid. It is for the institution to decide whether it wants to receive aid. If it decides to take State aid then Article 30(2) merely provides that the State will not discriminate against it. When State, whilst giving aid, asks the minority educational

... in terms of the provisions of the statutes and regulations framed thereunder the private professional institutions are required to maintain certain standards.

*They cannot be deviated or departed from. In the context of giving admissions to the meritorious students, it cannot be said that the students belonging to the minority community shall be admitted without reference to merit.*

The courts, it is relevant to place on record, would not encourage establishment of pseudo minority institutions imparting professional courses. The statutory rules and regulations, therefore, must be equally applied to all the professional institutions whether aided or unaided whether run by a minority or non-minority. In the matter of

maintenance of standard, these institutions must be equally treated.

If it be held that the minority institutions can admit all the students belonging to their own community whereas the non-minority institutions cannot, the same, in my opinion, would amount to re-writing the judgment.

The arguments which have been advanced in this behalf, if accepted, would clearly lead to the conclusion that the majority decision in TMA Pai Foundation is wrong.

Even while laying down the law in terms of Articles 15(3), 15(4), 16(1) and 16(4), the object is to attain equality. Reverse discrimination even in the majority judgment has been frowned upon. Can we say that the right of the minorities is higher than the other disadvantaged group? Possibly not having regard to Part III of the Constitution.

It is interesting to note that recently in Jennifer Gratz and Patrick Hamacher Vs. Lee Bollinger decided on 23<sup>rd</sup> June, 2003 by US Supreme Court the guidelines providing for selection method under which every applicant from an underrepresented racial or ethnic minority groups was to be automatically awarded 20 points out of 100 points needed to guarantee admission, was struck down as being violative of equality protection clause. It was observed:

"The very nature of a college's permissible practice of awarding value to racial diversity means that race must be considered in a way that increases some applicants' chances for admission. Since college admission is not left entirely to inarticulate intuition, it is hard to see what is inappropriate in assigning some stated value to a relevant characteristic, whether it be reasoning ability, writing style, running speed, or minority race. Justice Powell's plus factors necessarily are assigned some values. The college simply does by a numbered scale what the law school accomplishes in its "holistic review." Grutter, post, at 25: the distinction does not imply that applicants to the undergraduate college are denied individualized consideration or a fair chance to compete on the basis of all the various merits their applications may disclose."

Justice Ginsburg, however, speaking for himself and Justice Souter in their minority opinion stated:

"Our jurisprudence ranks race a "suspect" category, "not because (race) is inevitably an impermissible classification, but because it is one which usually, to our national shame, has been drawn for the purpose of maintaining racial inequality." Norwalk Core Vs. Norwalk Redevelopment Agency, 395 F. 2d 920, 931-932 (CA2 1968) (footnote omitted). But where race is considered "for the purpose of achieving equality," id., at 932, no automatic proscription is in order. For as insightfully explained, "the Constitution is both color blind and color conscious. To avoid conflict with the equal protection clause, a classification that denies a benefit, causes harm, or imposes a burden must not be based on race. In that sense, the Constitution is color blind. But the Constitution is color conscious to prevent discrimination being perpetuated

and to undo the effects of past discrimination. "United States Vs. Jefferson County Bd. of Ed., 372 F.2d 836, 876 (CA5 1966)(Wisdom,J.): see Wechsler, The Nationalization of Civil Liberties and Civil Rights Camp. To 12 Tex.Q.10,23(1968) (Brown may be seen as disallowing racial classifications that "imply an invidious assessment" while allowing such classifications when "not invidious in implication" but advanced to "correct inequalities"). Contemporary human rights documents draw just this line; they distinguish between policies of oppression and measures designed to accelerate de facto equality. See Grutter, post, at 1 (Ginsburg, J. concurring)(citing the United Nations - initiated Conventions on the Elimination of All Forms of Racial Discrimination and on the Elimination of All Forms of Discrimination against Women)."

It is not necessary to express any opinion on this judgment one way or the other but it is referred to as the same points out two different viewpoints. But one thing is clear; ultimate constitutional goal is to attain equality.

Human story would show that struggle of man for democratic polity was inspired by a desire to achieve equality among them. Indeed, some of the world Constitutions in their preamble abhor inequality and proclaim to achieve equality in all respects. Whatever may be the power and jurisdiction of the State and State authorities to make a special provision in favour of backward and downtrodden, when the Court tests the reasonableness of such distinctive State action, it should be done by posing a question whether such State action to

ameliorate social, economic and political poverty; whatever be the reason, delays the journey towards proclaimed goal of equality. If a measure tends to perpetuate inequality and makes the goal of equality a mirage, such measure should not receive the approval of the Court. The Court, in such circumstances, has no mould the relief by indicating what would be the reasonable measure or action which furthers the object of achieving equality. The concept of equality is not a doctrinaire approach. It is a binding thread which runs through the entire constitutional text. An affirmative action may, therefore, be constitutionally valid by reason of Articles 15(4) and 16(4) and various directive principles of State policy, but the Court cannot ignore the constitutional morality which embraces in itself the doctrine of equality. It would be constitutionally immoral to perpetuate inequality among majority people of the country in the guise of protecting the constitutional rights of minorities and constitutional rights of backward and downtrodden. All the rights of these groups are part of right to social development which cannot render national interest and public interest subservient to right of an individual or right of community.

In the event the minorities are not granted the right to establish educational institutions of their choice and admit students of their community, the right of equality would lose all its purpose and relevance. It is in that



sense the rights of the majority and minority must be held to be equal. In my opinion the provisions of Articles 19(1)(g), 29(2) and 30 must be so construed.

REASONABLE REGULATIONS:

So far as institutions imparting professional education are concerned, having regard to the public interest, they are bound to maintain excellence in standard of education. To that extent, there cannot be any compromise and the State would be entitled to impose restrictions and make regulations both in terms of Article 19(1)(g) and Article 30 of the Constitution of India. The width of the rights and limitations thereof of unaided institutions whether run by a majority or a minority must conform to the maintenance of excellence. With a view to achieve the said goal indisputably the regulations can be made by the State.

The right to administer does not amount to right to maladminister and the right is not free from regulation. The regulatory measures are necessary for ensuring orderly, efficient and sound administration. The regulatory measures can be laid down by the State in the administration of minority institutions.

### EXTENT OF REGULATIONS :

Article 30(1) of the Constitution does not confer an absolute right. The exercise of such right is subject to permissible State regulations with an eye on preventing mal-administration. Broadly stated there are "permissible regulations" and "impermissible regulations".

Some of the permissible regulations/restrictions governing enjoyment of Article 30(1) of the Constitution are

- (i) Guidelines for the efficiency and excellence of educational standards (See Sidhraibhai v. State of Gujarat, (1963) 3 SCR 837; State of Kerala v. Mother Provincial, (1970) 2 SCC 2079; All Saints High School v. Government of Andhra Pradesh, (1980) 2 SCC 478);
- (ii) Regulations ensuring the security of the services of the teachers or other employees (See In Re Kerala Education Bill, and All Saints High School v. Government of A.P. (supra);
- (iii) Introduction of an outside authority or controlling voice in the matter of service conditions of employees (See All Saints High School v. Government of A.P. (supra);

- (iv) Framing Rules and Regulations governing the conditions of service of teachers and employees and their pay and allowances (See State of Kerala v. Mother Provincial (supra) and All Saints High School v. Government of A.P. (supra));
- (v) Appointing a high official with authority and guidance to oversee that Rules regarding conditions of service are not violated, but, however such an authority should not be given blanket, uncanalised and arbitrary powers (See All Saints High School v. Government of Andhra Pradesh (supra));
- (vi) Prescribing courses of study or syllabi or the nature of books [See State of Kerala v. Mother Provincial (supra) and All Saints High School v. Government of A.P. (supra)]; and
- (vii) Regulation in the interest of efficiency of instruction, discipline, health, sanitation, morality, public order and the like [See Sidhbajbahi v. State of Gujarat (supra)]

Subject to what has been stated in T.M.A. Pai Foundation, some of the impermissible regulations are :

- (i) Refusal to affiliation, without sufficient reasons [All Saints High School v. Government of A.P. (supra)];
- (ii) Such conditions as would completely destroy the autonomous administration of the educational institution [All Saints High School v. Government of A.P. (supra)];
- (iii) Introduction of an outside authority either directly or through its nominees in the governing body or the managing committee of minority institution to conduct the affairs of the institution [All Saints High School v. Government of A.P. (supra)];
- (iv) Provision of an appeal or revision against an order of dismissal or removal by an aggrieved member of staff or provisions for Arbitral Tribunal [See St. Xavier's College v. State of Gujarat (supra), Lilly Kurian v. S.R. Lewina, (1979) 2 SCC 124 and All Saints High School v. Government of A.P. (supra)];

WHETHER THE STATE CAN IMPOSE RESERVATION ON A SELF FINANCED  
INSTITUTION IN PURPORTED EXERCISE OF ITS RIGHT TO ENFORCE  
THE DIRECTIVE PRINCIPLES OF STATE POLICY

The purported right of the States to prescribe a certain percentage of seats for their nominees including those belonging to the reserved category candidates is said to have arisen from:

- (i) The State grants essentiality certificate in terms whereof in the event of closure of the institution the State undertakes to take over.
- (ii) The States have a duty to enforce Directive Principles of State Policy in terms of Article 38, 41, 43 and 47 of the Constitution of India.

Directive Principles of State Policy contained in Part IV of the Constitution of India are not justiciable.

Equality clauses contained in Part III of the Constitution are to be found in Articles 14, 15 and 16. Whereas Article 14 mandates equality amongst all sections of people, Articles 15 and 16 deal with the matters specified therein namely, prohibition of discrimination on grounds of religion, race, caste, sex or place of birth and equality of opportunities in matters of public employment.

we are concerned in this case with Article 15. Clauses (3) and (4) of Article 15 of the Constitution of India read thus:

"(3) Nothing in this article shall prevent the State from making any special provision for women and children."

"(4) Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and Scheduled Tribes."

The said provisions were inserted by the Constitution First Amendment Act, 1951. There, thus, exists provision for an exception to Articles 14 and 15 as also Clause (2) of Article 29 of the Constitution of India. The State has also a right to make some reservation for women and children in terms of Clause (3) of Article 15 of the Constitution of India. Clauses (3) and (4) of Article 15 provide an exception to the general rule. A special provision either for women and children in terms of Clause (3) or for advancement of social and backward class of citizens of Scheduled Castes and Scheduled Tribes in terms of clause (4) must be made by the State in terms of a legislation or an executive order. Such a legislation or executive order would be in relation to the State action. The said provisions cannot be extended by way of imposition of

restriction or regulation so as to impair the right of a citizen of India under Article 19(1)(g) or Article 30 thereof. The question which may arise is as to whether the State can mandate upon an industry or a business house (for example) to provide job to a person belonging to a reserve category? If not, the necessary corollary would be that such a restriction or regulation cannot be imposed on a citizen carrying on an 'occupation'. The right of a citizen in terms of Article 19(1)(g) of the Constitution whether 'to practise any profession' or 'to carry on any business/occupation' must be the same or similar. The reasonable restrictions in terms of Clause (6) must be on the exercise of a right conferred by the said sub-clause. Although reasonable restrictions can be imposed on exercise of such right in terms of the constitutional scheme, the State cannot impose its own duties and obligations upon a citizen.

Furthermore, Clauses (3) and (4) of Article 15 are enabling provisions. The States were to take appropriate steps required therefor within the bounds, that is, limited only for uplifting the weaker sections and not for conferring upon them a preferential right. Reservation can be made inter alia by way of compelling State necessity. In any event the executive policy of the State cannot be thrust upon the citizens without any valid legislation.

At this juncture, it may be useful to refer to the decisions of this Court in Re: the Kerala Education Bill, 1957 (supra) wherein S.R. Das, J speaking for the Constitution Bench held in the following terms:

"Learned counsel for the State of Kerala referred us to the directive principles contained in Art. 45 which requires the State to endeavour to provide, within a period of ten years from the commencement of the Constitution, for free and compulsory education for all children until they complete the age of fourteen years and with considerable warmth of feeling and indignation maintained that no minorities should be permitted to stand in the way of the implementation of the sacred duty cast upon the State of giving free and compulsory primary education to the children of the country so as to bring them up properly and to make them fit for discharging the duties and responsibilities of good citizens. To pamper to the selfish claims of these minorities is, according to learned counsel, to set back the hands of the clock of progress. Should these minorities, asks learned counsel, be permitted to perpetuate the sectarian fragmentation of the people and to keep them perpetually segregated in separate and isolated cultural enclaves and thereby retard the unity of the nation? Learned counsel for the minority institutions were equally eloquent as to the sacred obligation of the State towards the minority communities. It is not for this Court to question the wisdom of the supreme law of the land. We the people of India have given unto ourselves the Constitution which is not for any particular community or section but for all. Its provisions are intended to protect all, minority as well as the majority communities. There can be no manner of doubt that our Constitution has guaranteed certain cherished rights of the minorities concerning their



language, culture and religion. These concessions must have been made to them for good and valid reasons. Article 45, no doubt, requires the State to provide for free and compulsory education for all children, but there is nothing to prevent the State from discharging that solemn obligation through Government and aided schools and Art. 45 does not require that obligation to be discharged at the expense of the minority communities. So long as the Constitution stands as it is and is not altered, it is, we conceive, the duty of this Court to uphold the fundamental rights and thereby honour our sacred obligation to the minority communities who are of our own. Throughout the ages endless inundations of men of diverse creeds, cultures and races - Aryans and non-Aryans, Dravidians and Chinese, Scythians, Huns, Pathans and Mughals - have come to this ancient land from distant regions and climes. India has welcomed them all. They have met and gathered, given and taken and got mingled, merged and lost in one body. India's tradition has thus been epitomised in the following noble lines :

"None shall be turned away  
From the shore of this vast sea  
of humanity  
That is India" (Poems by  
Rabindranath Tagore).

Indeed India has sent out to the world her message of goodwill enshrined and proclaimed in our National Anthem :

"Day and night, thy voice goes  
out from  
land to land,  
calling Hindus, Buddhists, Sikhs  
and Jains  
round thy throne  
and Parsees, Mussalmans and  
Christians.  
Offerings are brought to thy  
shrine by

the East and the West  
to be woven in a garland of  
love.

Thou bringest the hearts of all  
peoples

into the harmony of one life,  
Thou Dispenser of India's  
destiny,  
Victory, Victory, Victory to  
thee."

(Rabindranath Tagore)

It is thus that the genius of India has been able to find unity in diversity by assimilating the best of all creeds and cultures. Our Constitution accordingly recognises our sacred obligations to the minorities. Looking at the rights guaranteed to the minorities by our Constitution from the angle of vision indicated above, we are of opinion that cl. 7 (except sub-cl. 1 and 3 which apply only to aided schools) and cl. 10 may well be regarded as permissible regulation which the State is entitled to impose as a condition for according its recognition to any educational institution but that cl. 20 which has been extended by cl. 3(5) to newly established recognised schools, in so far as it affects educational institutions established and administered by minority communities, is violative of Art. 30(1)."

Mathew, J. speaking for a 9-Judge Bench of this Court in Ahmedabad St. Xavier's College Society (supra) laid down that the State necessity cannot be foisted upon the minority. It was held:

"We find it impossible to subscribe to the proposition that State necessity is the criterion for deciding whether a regulation imposed on an educational institution takes away or abridges the right under Article 30(1). If a

legislature can impose any regulation which it think necessary to protect what in its view is in the interest of the State or society, sounds paradoxical that a right which the Constitution makers wanted to be absolute can be subjected to regulations which need only satisfy the nebulous and elastic test of State necessity. The very purpose of incorporating this right in Part III of the Constitution in absolute terms in marked contrast with the other fundamental rights was to withdraw it from the reach of the majority. To subject the right today to regulations dictated by the protean concept of state necessity as conceived by the majority would be to subvert the very purpose for which the right was given."

This Court in Suneel Jatley and Others Vs. State of Harvana and Others [(1984) 4 SCC 296] held that reservations for students coming from rural areas would be bad in law.

#### LOCAL NEEDS :

It is difficult to define precisely what would constitute "local needs". Mr. Venugopal refers to the Medical Council of India Regulations, 1999 for the purpose of showing the requirements necessary to be considered by the State Government for the grant of essentiality certificate. The State Government alone would be in a position to determine local needs which may be based, for instance, in the case of doctors, on the ratio of doctors to the population of the State. Other factors such as the

percentage of the relevant minority in the State, the number of minority professional colleges belonging to that particular linguistic/religious minority in the State, percentage of poorer and backward sections in the State, total number of professional colleges therein, contends Mr. Venugopal, would be relevant factors. This may be so but similarly there are many more factors that would contribute to local needs. The criteria laid down in MCI Regulations no doubt provide for some guidelines for the purpose of determination of local needs but the same cannot be said to be exhaustive. Local needs would vary from State to State. Even development of a backward area may be a local need. Absence of good educational institutions in particular area may also be a local need. The State may, in pursuit of its policy for the development of the people, consider it expedient to encourage entrepreneurs for establishing educational institutions in remote and backward areas for the benefit of the local people. Local needs, therefore, cannot be defined only with reference to the State as a unit. For good reasons the State may not like to establish professional colleges or institutions only in their capitals.

#### ESSENTIALITY CERTIFICATE :

Although local needs, thus, may have to be determined keeping in view the factors enumerated therein but it must

also be noticed that no essentiality certificate is required to be given by the State in relation to engineering and other professional colleges. While laying down the law based on interpretation of a Constitution as well as a judgment, we cannot take a myopic view and hold that 'local needs' must be referable to the medical education. Furthermore, it may be difficult to give a restrictive meaning to the expression 'local needs' i.e. keeping the same confined to the area where the educational institution is sought to be established inasmuch as the right of minority extends to the entire State and, thus, the local needs may also have direct nexus having regard to the need of the State.

In State of Maharashtra vs. Indian Medical Association and Others [(2002) 1 SCC 589], this Court did not decide the question as to whether the expression "technical education" occurring in Article 371(2)(c) of the Constitution is distinct and different from "medical education". The questions which arise for consideration herein did not arise there.

In Indian Medical Association case (supra), this Court was concerned with Maharashtra University of Health Sciences Act, 1998 wherein the question revolved round as to whether the essentiality certificate would be necessary for the State to establish a Government-run medical college.

We cannot read the said judgment out of context.

### INTERPRETATION OF A JUDGMENT :

A judgment, it is trite, is not to be read as a statute. The *ratio decidendi* of a judgment is its reasoning which can be deciphered only upon reading the same in its entirety. The *ratio decidendi* of a case or the principles and reasons on which it is based is distinct from the relief finally granted or the manner adopted for its disposal. [See Executive Engineer, Dhenkanal Minor Irrigation Division, Orissa and Others Vs. N.C. Budhary (Deceased) By LRs. And Others (2001) 2 SCC 721]

In Padma Sundara Rao (Dead) and Others Vs. State of T.N. and Others [(2002) 3 SCC 533], it is stated:

"There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in Herrington v. British Railways Board ((1972) 2 WLR 537 : 1972 AC 877 (HL) [Sub nom British Railways Board v. Herrington, (1972) 1 All ER 749 (HL)]). Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases."

[See also Haryana Financial Corporation vs. Jagadamba Oil Mills and Another [(2002) 3 SCC 496]

In General Electric Co. Vs. Renusagar Power Co. [(1987)  
4 SCC 137], it was held:

"As often enough pointed out by us, words and expressions used in a judgment are not to be construed in the same manner as statutes or as words and expressions defined in statutes. We do not have any doubt that when the words "adjudication of the merits of the controversy in the suit" were used by this Court in State of U.P. v. Janki Saran Kailash Chandra ((1974) 1 SCR 31 : (1973) 2 SCC 96 : AIR 1973 SC 2071), the words were not used to take in every adjudication which brought to an end the proceeding before the court in whatever manner but were meant to cover only such adjudication as touched upon the real dispute between the parties which gave rise to the action. Objections to adjudication of the disputes between the parties, on whatever ground are in truth not aids to the progress of the suit but hurdles to such progress. Adjudication of such objections cannot be termed as adjudication of the merits of the controversy in the suit. As we said earlier, a broad view has to be taken of the principles involved and narrow and technical interpretation which tends to defeat the object of the legislation must be avoided."

In Rajeswar Prasad Mishra Vs. the State of West Bengal  
and Another reported in AIR 1965 SC 1887, it was held:

"Article 141 empowers the Supreme Court to declare the law and enact it. Hence the observation of the Supreme Court should not be read as statutory enactments. It is also well known that ratio of a decision is the reasons assigned therein."

(See also M/s. Amar Nath Om Prakash and Others Vs. State of Punjab and Others [1985 (1) SCC 345] and Hameed Joharan (Dead) and Others Vs. Abdul Salam (Dead) By LRs. And Others [(2001) 7 SCC 573])

It will not, therefore, be correct to contend, as has been contended by Mr. Nariman, that answers to the questions would be the ratio to a judgment. The answers to the questions are merely conclusions. They have to be interpreted, in a case of doubt or dispute with the reasons assigned in support thereof in the body of the judgment, wherefor, it would be essential to read the other paragraphs of the judgment also. It is also permissible for this purpose (albeit only in certain cases and if there exist strong and cogent reasons) to look to the pleadings of the parties.

In Keshav Chandra Joshi and Others Vs. Union of India and Others [1992 Supp (1) SCC 272], this Court when faced with difficulties where specific guidelines had been laid down for determination of seniority in Direct Recruits Class II Engineering Officers' Association Vs. State of Maharashtra, (1990) 2 SCC 715 held that the conclusions have to be read along with the discussions and the reasons given in the body of the judgment.



It is further trite that a decision is an authority for what it decides and not what can be logically deduced therefrom. [See Union of India Vs. Chajju Ram (2003) 5 SCC 568]

The judgment of this Court in T.M.A. Pai Foundation (supra) will, therefore, have to be construed or to be interpreted on the aforementioned principles. The Court cannot read some sentences from here and there to find out the intent and purport of the decision by not only considering what has been said therein but the text and context in which it was said. For the said purpose the Court may also consider the constitutional or relevant statutory provisions vis-à-vis its earlier decisions on which reliance has been placed.

#### FEE STRUCTURE:

On a bare reading of the relevant paragraphs of the judgment some of which are referred to hereinbefore, it is beyond any doubt that in the matter of determination of the fee structure the unaided institutions exercise a greater autonomy. They, like any other citizens carrying on an occupation, must be held to be entitled to a reasonable surplus for development of education and expansion of the institution. Reasonable surplus doctrine can be given effect to only if the institutions make profits out of their investments. As stated in paragraph 56, economic forces have

a role to play. They, thus, indisputably have to plan their investment and expenditure in such a manner that they may generate some amount of profit. What is forbidden is (a) capitation fee and (b) profiteering.

However the different State Governments have prescribed different amounts by way of fees as would appear from the following:-

State	Fee
Andhra Pradesh	Rs. 22000 per annum
Delhi	Rs. 45000 per annum
Gujarat	Govt. Seats -Rs. 21,000 Management Seats - Rs. 50000
Haryana	Rs. 40,000 per annum
Karnataka	Rs. 47,590/- For non-Karnataka Rs. 75,590
Kerala	Rs. 37,100
Tamil Nadu	Management seat - Rs. 30000
	Merit student - Rs. 25000
Uttar Pradesh	Rs. 45,000 per annum

The expression 'Capitation fee' does not have any fixed meaning. The Legislatures of some of the States, however, have defined capitation fee. We may notice that in the Tamil Nadu Educational Institutions (Prohibition of Collection of Capitation Fee) Act, 1992, Capitation fee has been defined as:

"capitation fee means any amount by whatever name called, paid or collected directly or indirectly in excess of the fee prescribed under Section 4;"

Section 4 c. the said Act states that any amount collected in excess of the fee so prescribed is prohibited in the following terms:

"Regulation of fee, etc. - (1) Notwithstanding anything contained in any other law for the time being in force, the Government, by notification, regulate the tuition fee or any other fee or deposit that may be received or collected by any educational institution or class or classes of such educational institutions in respect of any or all class or classes of students:

Provided that before issuing a notification under this sub-section, the draft of which shall be published, in the Tamil Nadu Government Gazette stating that any objection or suggestion which may be received by the Government, within such period as may be specified therein, shall be considered by them.

(2) No educational institution shall receive or collect any fee or accept deposit in excess of the amount notified under sub-section (1).

(3) Every educational institution shall issue an official receipt for the fee or deposit received or collected by it."

Once, however, it is held that such a provision would not constitute a reasonable restriction within the meaning of Clause (6) of Article 19, it must also be held that such

a provision would not satisfy the test of permissible regulations within the meaning of Article 30 thereof.

The ground reality, however, cannot be lost sight of. It is true, as has been contended by the learned counsel appearing on behalf of the applicants, that the Central Government in answer to question raised in the Parliament has stated that the expenses incurred by the State for imparting education to the students is very high. It may vary from three lakhs to five lakhs. Some States, however, in their colleges charge about rupees five thousand per year; whereas the unaided institutions demand anything between rupees two lakhs to five lakhs.

Some State Governments unfortunately followed suit, hiked fees and like many private unaided institutions the State of Haryana has also demanded the entire amount of fees for the whole course.

The fee structure, thus, in relation to each and every college must be determined separately keeping in view several factors including, facilities available, infrastructure made available, the age of the institution, investment made, future plan for expansion and betterment of the educational standard etc. The case of each institution in this behalf is required to be considered by an appropriate Committee. For the said purpose, even the books of accounts maintained by the institution may have to be

looked into. Whatever is determined by the Committee by way of a fee structure having regard to relevant factors some of which are enumerated hereinbefore, the management of the institution would not be entitled to charge anything more.

While determining the fee structure, safeguard has to be provided for so that professional institutions do not become auction houses for the purpose of selling seats. Having regard to the statement of law laid down in para 56 of the judgment, it would have been better, if sufficient guidelines could have been provided for. Such a task which is a difficult one has to be left to the Committee. While fixing the fee structure the Committee shall also take into consideration, inter alia, the salary or remuneration paid to the members of the faculty and other staff, the investment made by them, the infrastructure provided and plan for future development of the institution as also expansion of the educational institution. Future planning or improvement of facilities may be provided for. An institution may want to invest in an expensive device (for medical colleges) or a powerful computer (for technical college). These factors are also required to be taken care of. The State must evolve a detailed procedure for constitution and smooth functioning of the Committee.

While this Court has not laid down any fixed guidelines as regard fee structure, in my opinion, reasonable surplus

should ordinarily vary from 6% to 15%, as such surplus would be utilized for expansion of the system and development of education.

The institutions shall charge fee only for one year in accordance with the rules and shall not charge the fees for the entire course.

Profiteering has been defined in Black's Law Dictionary, Fifth edition as:

"Taking advantage of unusual or exceptional circumstances to make excessive profits"

With a view to ensure that an educational institution is kept within its bounds and does not indulge in profiteering or otherwise exploiting its students financially, it will be open to the statutory authorities and in its absence by the State to constitute an appropriate body, till appropriate statutory regulations are made in that behalf.

The respective institutions, however, for the aforementioned purpose must file an appropriate application before the Committee and place before it all documents and books of accounts in support of its case.

Fees once fixed should not ordinarily be changed for a period of three years, unless there exists extra-ordinary reason. The proposed fees, before indication in the prospectus issued for admission, have to be approved by the concerned authority/ Body set up. For this purpose the application should not be filed later than April of the preceding year of the relevant education session. The authority/ Body shall take the decision as regards fees chargeable later by October of the year concerned, so that it can form part of the prospectus. No institution should charge any fee beyond the amount fixed and the fee charged shall be deposited in a nationalized bank. In other words, no employee or any other person employed by the Management shall be entitled to take fees in cash from the students concerned directly. The statutory authority may consider the desirability of framing an appropriate regulation *inter alia* to the effect that in the event it is found that the management of a private unaided professional institution has accepted any amount other than the fees prescribed by the Committee, it may have to pay a penalty ten to fifteen times of the amount so collected and in a suitable case it may also lose its recognition or affiliation.

However, there cannot be any doubt that before any such order is passed the institutions concerned shall be entitled to an opportunity of being heard. For the aforementioned purpose, the State shall set up a machinery to detect cases

where amounts in excess of permitted limit are collected as it is the general experience that students pay a huge amount.

However, if for some reason, fees have already been collected for a longer period the amount so collected shall be kept in a fixed deposit in a nationalized bank against which no loan or advance may be granted so that the interest accrued thereupon may enure to the benefit of the students concerned. Ordinarily, however, the management should insist for a bond from the concerned students.

#### COMMON ENTRANCE TEST AND PERCENTAGE OF SEATS:

Paragraphs 48 to 66 appear under the heading "Private unaided non-minority educational institutions" whereas paragraphs 67, 68 and 69 appear under the heading "Private unaided professional colleges". The observations made by the bench, however having regard to paragraphs 58 and 59 are referable to both to the minority and non-minority unaided institutions. Paragraph 68 in no uncertain terms lays emphasis on merit for the purpose of admission to professional institutions.

However, paragraphs 58 and 59 also deal with professional institutions although discussions appear under different heading. This, however, would not minimize the importance of the statement of law made therein.



Paragraph 68 does not state that the statement of law made therein, applies only to the minorities, as for the purpose of local needs it refers to different percentages both for minority aided and non-minority unaided professional colleges. It cannot, therefore, be said that paragraph 68 has to be read in isolation and paragraphs 58 and 59 of the judgment would be irrelevant for the said purpose. If the said paragraphs are read conjointly, there cannot be any doubt that merit must be at the forefront. For the said purpose professional and higher educational institutions have been clubbed together.

A dichotomy has arisen in view of the findings of the bench occurring in paragraphs 58 and 59 on the one hand and 68 of the judgment on the other. Paras 68 refers to private unaided professional colleges which would include both minority and non-minority as would appear from the following :

"The prescription of percentage for this purpose has to be done by the Government according to the local needs and different percentages can be fixed for minority unaided and non-minority unaided and professional colleges."

Paragraph 58 clearly states that the merit must play an important role. In no uncertain terms, it is directed :

"While seeking admission to a professional institution and to become a competent

professional, it is necessary that meritorious candidates are not unfairly treated or put at a disadvantage by preferences shown to less meritorious but more influential applicants. Excellence in professional education would require that greater emphasis be laid on the merit of a student seeking admission. Appropriate observations made in this judgment in the context of admissions to unaided institutions."

It, therefore, takes into its fold inter se merit between minority and non-minority students.

Paragraph 59 contains illustration as to how the merit is usually determined. It may be true that paragraph 59 being illustrative in nature, other options at the hands of the minority institutions are not excluded but a confusion has certainly crept in as therein both minority and non-minority have been clubbed together.

Paragraph 59 deals with how to determine the merit by giving illustration. Thus, it does not rule out any other method for determining the merit which may also include marks obtained in qualifying examination. Paragraphs 58, 59 and 63, in my opinion, must be allowed to be given effect to and read conjointly for the said purpose.

Paragraph 68 should be read in five parts :

- (1) A difference is sought to be made as regards rules and regulations applicable to the aided institutions vis-à-vis unaided professional institutions. (This shows

that the regulations relating to admission of student shall be less rigid for unaided institutions as compared to aided institutions);

- (2) While conceding autonomy to the unaided professional institutions, (both minority and non-minority), it is mandatory that the principle of merit cannot be foregone or discarded (This shows that role played by merit must be given due importance);
- (3) The conditions may be laid down by the University or the other statutory bodies entitled to grant recognition to provide for merit based selection. (The same, however, in my opinion, would not mean that no condition other than those imposed at the time of grant of recognition can be imposed by way of legislation or otherwise inasmuch as the field of imparting education in professional institutions is governed by statutes. To the said extent, it has to be read down);
- (4) The management of a private unaided professional colleges for the purpose of admitting students will have options :- (a) to hold a common entrance test by itself; or (b) to follow the common entrance test held by the State or the University. The students belonging to the management quota may be admitted having regard to the common entrance test either held by the management or by the State/University, although the test may be common. So far as students belonging to poorer or backward section of society is concerned,

their seats will have to be filled up on the basis of counselling by the State agency. (As would appear from the discussions made hereinafter, it cannot be taken to its logical conclusion);

- (5) The percentage of management quota and the rest is required to be prescribed having regard to the local needs. (However, the percentage for minority unaided and non-minority unaided institutions may be different).

It is not correct to say that only because two different expressions "certain" and "different" have been mentioned at two places in para 68, they connote two different meanings. They will have to be read in the context in which they have been used. As a logical corollary, it will also be incorrect to say that minority unaided institutions can fill up all the seats from amongst the students belonging to their community whereas the non-minority unaided institutions will have no such right. The very fact that different percentages are to be fixed up for minority unaided and non-minority unaided institutions is itself a clear pointer to show that although different percentages may be prescribed therefor; but both minority unaided and non-minority institutions can admit the students of their choice to the extent of the percentage so prescribed, albeit without giving a go by to the merit criteria.

Thus, reservation can be made out of the candidates who have been found to be meritorious on the above basis. For instance, if 100 students qualify on merit either through a school leaving examination or a common entrance test, reservation can be made for certain percentage of students. The balance of the seats can then made available to students who belong to non-minority community including poorer or backward section of society as mentioned in paragraph 68 of the judgment. This will not only take care of admission with regard to meritorious candidates including minority candidates for whom a reservation is made but also for other students as for the local needs of the State.

If it is to be held that in a case of minority institution all the seats could be filled in by members of their community/language, if available, the same would run counter to para 68 of the judgment which says about certain percentage which can never be 100%. The expression "different percentages" occurring in para 68 would clearly mean there cannot be any fixed percentage. In a given case it may be more than 90% but in another it may be less than 50%. Different percentages must be worked out in terms of the need of the institution. It has nothing to do with minority or non-minority; aided or unaided.

The dictum of the court in St. Stephen vis-à-vis I.M.A. Pai Foundation must be read in that context. It cannot be

said as a matter of legal proposition that in each and every case the minority educational institutions would be entitled to fill up more than 50% of the seats from amongst the students of their choice and that too irrespective of merit. The fact that even students belonging to minority community take admission in colleges run or aided by the State or other private, unaided colleges cannot be lost sight of. On taking into consideration all the relevant criteria only the percentage can be worked out. It would be, in my considered opinion, wrong to compare the unaided institutions always with aided institutions. St. Stephen should be understood in proper perspective. What is explained in T.M.A. Pai (supra) is that there cannot be any fixed percentage. Each case will have to be considered on its own merit. Need of the institution should be the prime concern. Percentage will have to be worked out having regard to the need only.

For the purpose of achieving excellence in a professional institution, merit indisputably should be a relevant criterion. Merit, as has been noticed in the judgment, may be determined in various ways (Para 59). There cannot be, however, any fool-proof method whereby and whereunder the merit of a student for all times to come may be judged. Only, however, because a student may fare differently in a different situation and at different point of time by itself cannot be a ground to adopt different standards for judging his merit at different points of time. Merit for any purpose and in particular for the purpose of

admission in a professional college should be judged as far as possible on the basis of same or similar examination. In other words, inter se merit amongst the students similarly situated should be judged applying the same norm or standard. Different types of examinations, different sets of questions, different ways of evaluating the answer books may yield different results in the case of the same student.

Selection of students, however, by the minority institutions even for the members of their community cannot be bereft of merit. Only in a given situation less meritorious candidates from the minority community can be admitted vi-a-vis the general category; but therefor the modality has to be worked out. For the said purpose de facto equality doctrine may be applied instead of de jure equality as every kind of discrimination may not be violative of the equality clause. (See Pradeep Jain vs. Union of India - 1984 (3) SCC 654).

It may be true that some self-financed professional institutions have been permitted to hold their own examination so as to enable the management to fill up their seats from its own quota, as fixed by the State Government. Although no complaint has yet been received by the respective Governments, it may be possible that the time was not ripe for it. As and when complaints are received with

regard to holding of an impartial and transparent test, the same has to be examined by the State/University. We may, however, place on record that the State of Maharashtra has placed before us a chart showing that some of the students had appeared at two examinations and one who got only 8% in the common entrance test held by the State, passed the examination held by the management. From the above chart supplied to us by the State of Maharashtra, it appears that only three students who had appeared both at the common entrance test held by the State and the management had passed the common entrance test held by the State whereas a large number of students had passed the test held by the management, although they could not pass the Common Entrance Test. The merit of the students whether belonging to the minority community or otherwise, thus, may be required to be placed on more rigid test.

While considering this question, we may not also lose sight of the fact that a student who aspires to take admission in a professional college keeping in view the extent of competition he has to face, would like to appear in as many examinations as possible. For the said purpose he or she may not choose only one State. Even in a State like Karnataka, as has been noticed in T.M.A. Pai Foundation (supra), a large number of private institutions exist. But, if they are permitted to hold their own examinations, not only the students will have to purchase different admission



forms, which as noticed hereinbefore, may cost between Rs.500/- to Rs.1,000/- but he may be asked to appear in examinations at various places on the same day or on the next day and having regard to the distance, the transport facilities and other factors, he may not be able to appear therein. Travelling from place to place for the purpose of appearance at the examinations in quick succession would also entail a huge expenditure. It may also be difficult to direct that such examinations be held with sufficient time gap. The fact remains that in terms of this judgment each State will be entitled to hold their own examinations. We are also not oblivious of the fact that allegations have been made that some institutions even may not sell an admission form unless it is assured of a hefty sum at the time of admission. It may be true that the States like Karnataka, Kerala and Tamil Nadu have permitted the minority institutions to conduct their own examinations for the purpose of admitting the students of their choice. Some institutions have pointed out that they have been holding such examinations for a long long time on all-India basis and fairness and transparency of such examinations have never been questioned by any State or the statutory authorities. We do not intend to go into the correctness or otherwise of the said plea. However, their cases may be considered separately by the appropriate body if any occasion arises therefor. While granting the right to determine the suitability of a candidate on the basis of

marks obtained in the qualifying examination or on the basis of their own examination, or an examination conducted by the State, merit cannot be sacrificed. Some mechanism as far as practicable must be found out also for the purpose of judging the inter se merit.

Furthermore, answers to Questions 5 (a) and (c), would go to show that the minority unaided institutions have a right to evolve their own machinery for admitting the students on the basis of merit subject of course to passing the fairness and transparency test. Even for non-minority professional institutions such a right has been recognized. There is no mechanism which would ensure fairness or transparency of the examination held by each and every unaided professional institution. A suggestion has been mooted out that Associations/Federations of private institutions have been formed. It may, thus, be possible to protect the right of the minority if such Associations/Federations take a decision in this behalf in consultation with the statutory authorities or the concerned State as regards holding of a common entrance test for the said purpose.

We may notice that Mr. R.N. Trivedi, learned Additional Solicitor General, has submitted that the Central Government may hold such all-India examinations but there are practical difficulties in this behalf, as has been rightly pointed out

by Mr. Venugopal. The need of each State must be judged separately. A number of students may like to take a chance of taking admission in more than one State. Unless proper mechanism and requisite infrastructure therefor is created, as at present advised, it may not be possible for the Central Government to hold any examination on all-India basis. There is another aspect of the matter which cannot be lost sight of. There must be an agency which would have to determine the equivalence of several examinations. Many universities have adopted such a mechanism. The standard of education varies from State to State or university to university or board to board. In such a situation, equivalence of degrees must be considered for the said purpose by an appropriate authority.

In the aforementioned premise, I am of the opinion that the right of the minorities should be protected and fairness and transparency in holding such examinations would also be maintained if the minority institutions come to a consensus through their association or federation to hold a common test under the supervision of a monitoring committee which may be subject to verification at a later stage by taking recourse to : (1) report back system; (2) all answer papers may be preserved; and (3) in case of dispute some independent agency may determine the same.

It goes without saying that having regard to the number of institutions vis-à-vis number of candidates with

reference to the local needs, it will be open to the State/University to fix higher cut-off marks than prescribed by the Medical Council of India or the All India Council for Technical Education. So far as common entrance test proposed to be held by the Federation/Association of private unaided professional institutions is concerned, the modalities and the detailed procedure therefor must be worked out so that it may not cause any undue inconvenience to either the students or the institution(s). By way of an example, we may state that if a common entrance test is held under the auspices of the Federation/Association, it must clearly spell out that those who belong to minority community, whether based on religion or language, shall be admitted only in the institutions run by such community and not in the institutions run by the other community at the first instance. Only in the event the seats remain unfilled up, they would clearly be filled up by the students belonging to the general category including those who do not belong to that particular community running the institution. Similarly, the mode and manner in which the expenses are to be incurred for holding the examinations, the apportionment thereof as well the disbursement of the amount earned by way of selling the admission forms etc. have to be worked out by the Committee.

The minority institutions imparting professional courses may have a legal or constitutional right to hold

their own examination; but a serious consideration is required to be bestowed as to whether for the purpose of judging merit they should opt for the Common Entrance Test held by the State. Such a course, if resorted to, would not only be helpful for determining the inter se merit between the students/candidates but also would be sufficient to be indicative of the fact how and to what extent the students belonging to minorities lag behind the majority so that special efforts can be made to bring their standard up to the national level.

The quota of seats to be filled up by the State Government for the poor or weaker sections of society may be fixed on the basis of the entrance test held by the concerned State Government or the University. Economic disability of a meritorious student should come to the forefront for determining criteria as regard poor or weaker sections of the society.

There cannot, however, be any gain-saying that the appropriate statutory authority on a deeper consideration of the matter may prescribe a suitable method for the purpose of determining the merit as also the fair and transparent manner in which such examinations can be conducted. Such a power exists under the UGC Act, MCI Act and AICTE Act. The relevant enactments wherein these statutory authorities have

been created provide for such law. However, assuming such a machinery is not evolved, the State may constitute a body which may be headed by a person who has been a judge of the High Court to be nominated by the Chief Justice thereof. Standard of education at no cost shall be given a go by.

Furthermore, any institution if it thinks proper and expedient, may file an application for grant of exemption so as to enable it to hold its own examination. An application in this behalf should be filed by the end of April of the previous year in which such examination is sought to be held. The aforementioned body would pass an appropriate order within three months from the date of receipt of such representation upon giving an opportunity of hearing and placing of material in support of its stand, to the institution concerned.

Several States like State of Tamil Nadu, Karnataka and Kerala have permitted the educational institutions to hold their own examination for the purpose of admitting students within their quota. Some of the States like Maharashtra and Gujarat insist on admitting the students through Common Entrance Test. The following chart gives a glimpse as to how different States understood the judgment of this Court differently:

State	Admissions	
	Govt.	Management
Andhra Pradesh	85%	15%
Delhi	95%	15% Max
Gujarat	85%	15%
Haryana	15% AIEEE	15%
	70% CEET 2003	
Karnataka	75%	25%
Kerala	50%	50%
Orissa	85%	15%
Tamil Nadu	50%	50%
Uttar Pradesh	85%	15%
Chhattisgarh	60%	40%
Maharashtra	85%	15%

(These seats must also be filled from the State common entrance test list)

Unless there exists any exigency normally the institutions will have the right to admit a higher percentage of students depending upon their need. However all such students must be admitted only on merit. In the event, some seats remain vacant. they must be filled by general category students strictly on merit.

As noticed hereinbefore, different States and different High Courts have laid down different percentages of seats for management and the State. The learned counsels appearing on behalf of parties have submitted that this Court may, with a view to avoid any future controversy, fix a definite percentage for the said purpose. We are afraid that it is not possible. Different institutions may be established by different minority communities. The need of

the minority community may differ from State to State. The need of the minority community may have a nexus with the population belonging to that community in that State. It will further depend upon various other relevant factors. By way of example, we may say that in a State where the percentage of a particular religion may be 30 or 35, the minority institution established by members of that religion may have a higher stake than the members of the community professing a religion but the population of which is negligible. Similar may be the case with minority institutions based on language.

The percentage of seats will also depend upon the need of the community in a particular State as also the need of the institution itself. The nature of the professional course would also have relevance. All these factors must be taken into consideration by the appropriate committee or Body so long a statutory regulation is not framed in this behalf.

Furthermore, the need of the community vis-à-vis the local needs must be judged upon taking into consideration the relevant factors and ignoring irrelevant ones. In terms of Paragraph 68 of the Judgment, local need would be a relevant factor for the purpose of determining the percentage of students who would be admitted on non-minority quota. Local needs, if it is compelling state interest, will have a primacy over the need of the minority community



and in that view of the matter it would not be correct to lay down a proposition of law that the need of that community in the State would be paramount. Each case, thus, has to be considered on its own merit and no hard and fast rule can be laid down therefor.

For the aforementioned purpose also, a machinery should be evolved in the respective States, the decision of which shall be final and binding.

However, there may not be any permanent Committee functioning as a tribunal. Such a body, if any, must be created under a statute. A tribunal with an adjudicatory power should not be directed to be created by this Court in exercise of its power under Article 142 of the Constitution of India. This direction is only interim in nature and is being issued in the interest of all concerned. It is, therefore, clarified that the body created in terms of this judgment would function only so long a statutory body, if any, does not come into being by reason of a statute or statutory rules. The Legislature or the rule making authority may, however, lay down the procedure for proper functioning thereof.

#### MERIT:

Technical profession in general and medical profession in particular in all countries and in all ages has been considered to be a noble profession. To acquire excellence,

these professions demand a very high calibre, which criteria can be satisfied only by the meritorious students. If we want to achieve very high standard which would be comparable to the standard of the developed countries, then merit and merit alone should be the basis of selection for the candidates.

Secondly, not only to maintain high standard of education, but also to maintain uniformity of standard, the right of selection of candidates for any professional course cannot be left to the discretion of any individual management. Efforts must be made to find out one single standard for all the institutions.

Thirdly, to ensure high standard of education and for that purpose to ensure admission to the most eligible candidates, requiring merit in a poor country like ours, the tuition and other fees should be within the reach of common people.

So far as minority institutions are concerned, merit criteria would have to be judged like a pyramid. At the kindergarten, primary, secondary levels, minorities may have 100% quota. At this level the merit may not have much relevance at all but at the level of higher education and in particular professional education and post graduate level education, merit indisputably should be a relevant criteria. At the post-graduation level, where there may be a few

seats, the minority institutions may not have much say in the matter. Services of doctors, engineers and other professionals coming out from the institutions of professional excellence must be made available to the entire country and not to any particular class or group of people. All citizens including the minorities have also a fundamental duty in this behalf.

#### HUMAN RIGHTS ASPECTS OF SELECTION ON THE BASIS OF MERIT:

This aspect of the matter may also be considered from Human Right angle.

Rights of minorities, on the one hand, and rights of persons to have higher education and right of development should be so construed so as to enable the Court to give effect thereto.

The Universal Declaration of Human Rights, 1948 provides for 27 rights. Right of Education is also one of the human rights. Article 26 reads thus:

"(1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit."

(2) Education shall be directed to the full development of the human

personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

Parents have a prior right to choose the kind of education that shall be given to their children."

(Emphasis Supplied)

Article 3 of Convention Against Discrimination in Education (1960) reads thus:

"Article 3 undertakes "to ensure, by legislation, where necessary, that there is no discrimination in the admission of pupils to educational institutions: not to allow any difference of treatment by the public authorities between nationals, except on the basis of merit or need, in the matter of school fees and the grant of scholarships..to give foreign nationals resident within their territory the same access to education as that given to their own nationals."

Apart from the aforementioned rights, Right to Development is also a human right. "Development" connotes an ongoing process. An economic prosperity or elimination of poverty is not the only goal to be achieved but along with it allows individuals to lead a life with dignity with a view to participate in the Governmental process so as to enable them to preserve their identity and culture

We may refer to the UN Declaration on the Right to Development, 1986. The Declaration describes development as a comprehensive economic, social, cultural and political process, which aims at constant improvement of well being of people and of individuals on the basis of their active, free and meaningful participation in the process.

In the UNESCO Convention against Discrimination in Education, the States parties agree (Article 5(c)) that "it is essential to recognize the right of members of national minorities to carry on their own educational activities, including the maintenance of schools and, depending on the educational policy of each State the use or the teaching of their own language," and set out the circumstances in which this right may be exercised. The European Convention on Human Rights contains a provision (Article 14) in which "association with a national minority" is listed among a series of grounds upon which discrimination is prohibited. The International Covenant on Civil and Political Rights, adopted by the UN General Assembly in 1966, includes an article on the rights of persons belonging to minorities which reads:

"Article 27. In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practice their

own religion, or to use their own language."

Among the decisions of principal organs of the United Nations which have dealt with the question of special protective measures for ethnic, religious, or linguistic groups are three resolutions of the General Assembly: (1) on the future government of Palestine, (2) on the question of the disposal of the former Italian colonies and (3) on the question of Eritrea. In addition, the Statute of the City of Jerusalem, approved by the Trusteeship Council, on 4 April 1950, provides special protective measures for ethnic, religious, or linguistic groups in articles dealing with human rights and fundamental freedoms, the legislative council, the judicial system, official and working languages, the educational system and cultural and benevolent institutions, and broadcasting and television.

From the texts of the instruments and decisions mentioned above, it may be inferred that the term "minority" is applied internationally to two distinct categories of persons: (a) minorities whose members desire equality with dominant groups in the sole sense of non-discrimination, and (b) those whose members desire equality with dominant groups in the sense of non-discrimination and the recognition of certain special rights and the rendering of certain positive services. The kind of "minority rights" that they feel they are entitled to claim if their

equality within the State is to be real includes one or more of the following:

- (a) provision of adequate primary and secondary education for the minority in its own language and its cultural traditions;
- (b) provision for maintenance of the culture of the minority through the establishment and operation of schools, libraries, museums, media of information, and other cultural and educational institutions;
- (c) provision of adequate facilities to the minority for the use of its language, either orally or in writing, in the legislature, before the courts, and in administration, and the granting of the right to use that language in private intercourse;
- (d) provision for respect of the family law and personal status of the minority and their religious practices and interests; and
- (e) provision of a certain degree of autonomy.

Several areas are sought to be secured wherefor the struggle continues. The gap between the developed and the developing countries is a yawning one. Whereas there has

been a rapid economic growth in a few countries bringing millions of people out of poverty, narrowing the gap between haves and have-nots, a large number of countries have seen the gap grow and poverty increase. Development and the eradication of poverty vis-à-vis human rights must be seen in that perspective.

The right to establish professional colleges both by minorities and non-minorities has been found in Article 19(1)(g) as also Article 30 of the Constitution of India. These rights vis-à-vis restrictions and limitations thereupon should be construed not only from economic point of view but also having regard to the international treaties, declarations and conventions on Human Rights. The right of a minority is a human right so also the right of development. Thus, subject to reasonable restrictions, any unaided institution imparting professional courses may although exercise greater autonomy in the matter of management and determination of the fee structure, it will have a limited right so far as the right to admit students is concerned. T.M.A. Pai Foundation says that merit shall be the criteria. Right of development finds place in WTO and GATT. It takes into consideration globalisation and opening up of economy. Excellence in professional education must be viewed from the economic interest in the country. In order to compete with the other developed countries, GDP of India



should be around 15% instead of present rate of 5%. This can be achieved only by producing students of excellence, which can be achieved only by encouraging institutions of excellence imparting professional education to those who are meritorious. Giving encouragement to the students, having better merit will, thus, have a direct nexus with the economic and consequently the national interests of the country. The right of development from the human right point of view must be construed liberally. When there are two competing human rights namely human rights for the religious minorities and the human rights for development, having regard to the economic and national interest of the country in the matter of admission of students, the latter should be allowed to prevail subject to protection of the basic minority rights. The State may have to strike a delicate balance between these two competing rights. Furthermore, ~~the right to admit~~ students may vary from course to course, discipline to discipline. At the stage of post graduate level, there may be only one seat or two seats, and, thus, in such a situation the right of the minority institutions to admit a student may be less than in the case of non-professional course.

"Proper education", Nani Palkhiwala said, "should lead to civilization." Recently, in Kapila Hingorani vs. State of Bihar [JT 2003 (5) SC 1], a Bench of this Court

noticed the following observations of Field, J. in *Munn vs. Illinois* [( 377) 94-US 113] as to what is "Life", which was in the following terms :

"[S]omething more than mere animal existence and the inhibition against the deprivation of life extends to all those limits and faculties by which life is enjoyed."

Therein it was noticed :

"The right to development in the developing countries is itself a human right. The same has been made a part of WTO and GATT. In 'The World Trade Organization. Law, Practice, and Policy (Oxford) by Matsushita Schoenbaum and Maurelidis at page 389, it is stated:

"The United Nations has proclaimed the existence of a human right to development. This right refers not only to economic growth but also to human welfare, including health, education, employment, social security, and a wide-range of other human needs. This human right to development is vaguely defined as a so-called third-generation human right that cannot be implemented in the same way as civil and political human rights. Rather, it is the obligation of states and intergovernmental organizations to work within the scope of their authority to combat poverty and misery in disadvantaged countries."

[Emphasis supplied]

Poverty to a great extent can be combated through education.

Having regard to globalisation and opening up of the market, the State expects various medical colleges and educational institutions and universities to move in. Under WTO and GATT human development has taken its firm root. A decent life to the persons living in the society in general is perceived.

In the said scenario this Court in Kapila Hingorani (supra) observed :

"The States of India are welfare States. They having regard to the constitutional provisions adumbrated in the Constitution of India and in particular Part IV thereof laying down the Directive Principles of the State Policy and Part IVA laying down the Fundamental Duties are bound to preserve the practice to maintain the human dignity."

To achieve this, the promotion of human development and the preservation and protection of human rights proceed from a common platform. Both reflect the commitment of the people to promote freedom, the well-being and dignity of individuals in society. Human development as a human right has a direct nexus with the increase in capabilities of human beings as also the range of things they can do. Human development is eventually in the interest of society and on a larger canvas, it is in the national interest also. As a human right, human development finds its echo in several

areas as for example in excellence in professional education, be it the study of medicine, engineering or law. Progress and development in these fields will not only give a boost to the economy of the country but also result in better living conditions for the people of India.

In T.M.A. Pai Foundation's case (supra), this Court called upon the private unaided institutions including the minority educational institutions to fulfill the hopes and aspirations of the meritorious students and in particular the meritorious socially and educationally backward students. Higher education as contained in Article 26 must be based on merit. The competing human rights of the minorities vis-à-vis any other citizen, thus, requires a delicate balance.

Furthermore Article 51A(j) enjoins a duty of every citizen of India inter alia to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of excellence and achievement.

In T.M.A. Pai Foundation (supra), this Court in no uncertain terms said that merit would be the first criteria for imparting professional education. It must be given full effect with the aid of these additional reasons.

RECOGNITION/AFFILIATION :

Although the minorities have a right to establish institutions of their own choice, they admittedly do not have any right of recognition or affiliation for the said purpose. They must fulfill the requirements of law as also other conditions which may reasonably be fixed by the appropriate Government or the university.

In T.M.A. Pai Foundation (supra) it was laid down that certain conditions can be imposed as regards admission of students, mode of holding examinations at the time of grant of recognition. A question has been raised by Mr. Nariman that once recognition has been granted, no further restriction can be imposed. We do not agree. There exist some institutions in this country which are more than a century old. It would be too much to say that only because an institution receives recognition/affiliation at a distant point of time the appropriate Government is denuded of its power to lay down any law in imposing any fresh condition despite the need of change owing to passage of time. Furthermore, the Parliament or the State Legislatures are not denuded of its power having regard to restrictions that may satisfy the test of clause (6) of Article 19 of the Constitution of India or regulations in terms of Article 30 depending upon the national interest/public interest and other relevant factors. We, however, wish to emphasise that the State/University while granting recognition or the

affiliation cannot impose any condition in furtherance of its own needs or in pursuit of the Directive Principles of State Policy.

#### AN EPILOGUE:

It is unfortunate that a Constitution Bench had to be constituted for interpreting a 11-Judge Bench judgment. Probably in judicial history of India, this has been done for the first time. It is equally unfortunate that all of us cannot agree on all the points, despite the fact that the matter involves construction of a judgment. In the name of interpretation we have to some extent, however little it may be re-written the judgment. We have laid down new laws and issued directions purported to be in terms of Article 142 of the Constitution. We have interpreted T.M.A. Pai; but we have also made endeavours to give effect to it. In some areas it was possible; in some other it was not.

We have refrained ourselves from expressing any opinion at this stage as to whether grant of settlement of Government land at a throw-away price or allowing the private institutions to avail the facilities of Government hospitals would amount to grant of aid or not. We have also not expressed any opinion on cross-subsidy.

The superior courts in India exist for interpretation of Constitution or interpretation of statutes. They cannot evolve a fool-proof system on the basis of affidavits filed

by the parties or upon hearing their counsel. Certain details of vexing problems on the basis of the interpretation given by this Court must be undertaken by the statutory bodies which have the requisite expertise. It is expected that statutory bodies would be able to perform their duties for which they have been established. The doors of the Court should not be knocked every time, if a problem arises in implementation of the judgment, however slight it may be. The Court has its own limitations. The problems which can be sorted at the ground level by holding consultations should not be allowed to be brought to the Court. It is in that view of the matter, we have thought it fit to direct setting up of committees for the aforementioned purposes.

In the present constitutional set up having regard to Entry 66, List I of the Constitution of India, the legislative power of the State may be very limited; the extent whereof may have to be determined in appropriate cases. But the stake of the State in such matters is also not minimal. The State has to evolve its own policies generating the source of employment.

We have come across several schemes framed by the States in terms whereof incentives are being given to the private industries for generating employment or reduction in taxes is being proposed if graduates are employed. The respective States, therefore, must apply its mind while

granting essentiality certificate inasmuch as the human resource development problems will have to be faced by it. In evolving a sound policy decision in this behalf, the statutory bodies shall also have to lend their ears to the respective State Governments while granting permission for establishment of the professional educational institutions. The Human Resource Development Ministry of the Central Government should also play its role.

The I.As. for clarification are, thus, disposed of. The writ petitions may now be placed before appropriate Benches for disposal. In the facts and circumstances of this case, there shall be no order as to costs.

.....J.

[S.B. SINHA]

New Delhi.  
August 14, 2003



REPORTABLE-444/2003

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3068 OF 1997

( From the Judgment and Order dated 2.7.96 of the Madhya Pradesh High Court in W.P.No.426 of 1996)

Regional Officer, C.B.S.E.

..Appellant

v.

Ku.Sheena Peethambaran and Ors.

..Respondents

THE 1ST DAY OF SEPTEMBER, 2003

Present:

Hon'ble Mr.Justice Brijesh Kumar

Hon'ble Mr.Justice Arun Kumar

Tara Chand Sharma and Ms.Neelam Sharma, Advs. for the Appellant

JUDGMENT

The following Judgment of the Court was delivered:

\*CP\*



IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3068 OF 1997

Regional Officer, C.B.S.E.

.... Appellant

Versus

Ku. Sheena Peethambaran and Ors.

.... Respondents

JUDGMENT

BRIJESH KUMAR, J.

The Central Board of Secondary Education (for short 'the Board'), felt aggrieved by the decision of Madhya Pradesh High Court rendered on 2.7.1996 in writ petition No. 426 of 1996, filed by the respondents No. 1 and 2, whereby directing the Board to declare the result of the examination undertaken by the respondent No. 1 for class X in the year 1996, hence the present appeal. In the impugned judgment it was also directed that a fresh mark-sheet be also issued to her, since the result had been declared earlier only provisionally. The grievance of the Board that the respondent No. 1 was not eligible to appear in the high school examination, was not accepted.

The brief facts of the case are that the respondent No. 1 was a student of St. Paul's School, Morar, Gwalior, affiliated to the Central Board of Secondary Education, New Delhi. She filled up form for high school examination but the same was withheld by the school authorities on the ground that she had not cleared her class IX examination. It gave rise to filing of a writ petition No.484/95 by respondents nos. 1 and 2, the candidate and her father. On 4.4.95 an interim order was passed by the High Court to the following effect: -

"4.4.95

#### ORDER

- 1) Notice of admission was given to the respondents.
- 2) There is a report that respondents have refused the notice .
- 3) Let a fresh notice be sent by way of registered post also and service be effected by affixation. The Notices be issued for 18<sup>th</sup> April, 1995.
- 4) In para 11 of the Petition, it has been stated that the Petitioner was initially "promoted" but later on she was declared to have "failed". In this view of the matter, a direction is given to the respondents to permit the petitioner No.2 to join Class X. This would be subject to the decision of this petition.

C.C. Today.

Sd/-  
T.S. Doabia  
Judge"

Later yet another interim order was granted on 19.9.1995 in Writ Petition No. 484 of 1995 to the following effect:-

"19.9.1995

ORDER

Petitioner No. 2 be permitted to take part in the examination.

To come up on the date already fixed.

Sd/- T.S. Doabia  
Judge"

The Writ Petition No. 484/95 was thereafter disposed of by order dated 5.12.95, which reads as under:-

"Heard.

This petition is rendered infructuous as the admission form for appearing in examination of the petitioner has since been sent to the Central Board of Secondary Education, Delhi. This is class X examination. As per the respondents the Petitioner would be permitted to take part in this examination. No further direction is required.

Disposed of as such.

Sd/-  
Judge"

It, however, appears that another writ petition No. 426 of 1996 was filed by respondents No. 1 and 2 with a prayer that a telegram sent by the Regional Officer of the Board, Ajmer, Rajasthan not permitting her to

appear in the examination may be quashed and the petitioner No. 1 may be allowed to appear in the examination of the Board which was to start on 6.3.1996. On 1.3.1996 the High Court passed the following interim order:-

In view of these circumstances, it is directed that petitioner should be permitted to appear in the examination at the roll No. 1118864 as mentioned in the telegram, in all papers of Class Xth. The result, however, would be subject to the decision of this petition, Certified copy today, on payment.

Judge"

Thereafter the next order was passed on 17.5.1996 saying "....Let the result of the petitioner be declared. List in the last week of June, 1996". Ultimately, the petition was finally disposed of by order dated 2.7.1996. The High Court in its judgment refers to the plea raised by the appellant to the effect that for taking up examination for Class X a student must complete a regular course of studies for Class IX from an institution affiliated to the Board. Since the respondent No. 1 had not passed her class IX examination she was not eligible for appearing in the examination in Class X. Thereafter bye-law 10.2 was quoted in the judgment, which provision, according to the High Court, was very material. It is as follows:-

“10.2 A candidate for All India/Delhi Secondary School Examination should have:-

- (a) passed the Middle School Examination (Class VIII) of a Board or of an affiliated/recognized school at least two years earlier than the year in which he would take secondary school (Class X) examination;
- (b) secured a grade higher than grade E in each of the subject of internal assessment at the Examination referred to at (a) above; and
- (c) passed the third language as per requirement laid down in the scheme of studies.”

On the basis of the above provision, the Court found that the respondent No. 1 possessed minimum educational qualification of middle school examination (Class VIII) so as to be entitled for appearing in the class X examination. Hence direction was issued to finally declare the result of respondent No.1 and to issue a fresh marks-sheet. Learned counsel for the appellant has, however, drawn our attention to provision contained in bye-law 7.3 of the bye-laws of the Board which reads as under:-

“7.3. Admission to Class X in a school shall be open only to such a student who:-

- (a) has completed a regular course of studies for class IX, and;

(b) has passed class IX examination from an institution affiliated to this Board or to any recognized board or to any recognized board or is recognized by the Education Department of the govt. or the State/U.T. in which such an institution is located.

Xxx

xxx "

Thereafter bye-law no. 16 is referred, relating to private candidates. It is as follows:-

"16. Private Candidates

Definition: For the purposes of the bye-laws contained in this chapter and the chapter 5, unless there is something repugnant in the subject or context a Private Candidate' means a person who is not a Regular Candidate but, under the provisions of the bye-laws, is allowed to undertake and/or appear in the All India/Delhi Senior School Certificate Examination or All India/Delhi Secondary School Examination of the Board.

Xxx

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xxx "

We find that bye-laws nos.21 and 22 are also relevant which are quoted below:-

"21. Person eligible to appear as a Private Candidate for All India Secondary School Examination:-

(i) A candidate who had failed at the All India Secondary School Examination of the Board, will be eligible to reappear at the subsequent examination as a Private candidate in the syllabus and text books as prescribed for the examination of the year in which he will reappear.



- (ii) Teachers serving in institutions affiliated to the Board.

XXX XXX XXX

22 (v) Those regular Candidates who have failed to obtain promotion to class X of the school affiliated to the Board or any other recognized Board shall not be admitted to the Delhi Secondary Examination of the Board as private candidates."

The definite case taken on behalf of the appellant before the High Court has been that the respondent no.1 had failed in her class IX examination for the year 1994-95. In this context the prayer made by the respondent no.1 in her writ petition no.484 of 1995, may be referred to, which reads as follows :

"(i) to quash the result declared by the Respondent No.3 in so far as respondent No.1 is concerned and Respondent No.1 be declared as promoted;

(ii) Respondent No.3 be directed to take supplementary examination in Hindi and English subjects within a period of seven days with a further direction to the respondent no.3 to give respondent no.1 some time to prepare herself for the supplementary examination."

It is thus clear that, according to the respondent no.1 herself, she was declared failed in her examination for class IX. The High Court, while finally deciding the writ petition no.426 of 1996 by order dated 2.7.1996 conveniently overlooked to take note of the provision contained in bye-law no.7.3, contents of which have been indicated above. There was only a mention of clause 7.3 of bye-laws of the Board but nothing beyond that was

indicated or observed in the judgment, as to why it would not be applicable to the case. After quoting bye-law 10.2 the High Court held that the respondent no.1 was eligible to appear in the high-school examination since there was a gap of two years in between her two examinations viz. class VIII and class X. The High Court also did not record any finding in respect of other conditions as mentioned in bye-law no.10.2, namely, a student must have secured higher than 'E' grade in each subject of internal assessment and has also passed the third language as per requirement laid down in the scheme. The High Court failed to consider that bye-law 10.2 will not be applicable to the respondent no.1 but it would be bye-law 7.3, which would apply in her case. Therefore, it was necessary that she must have passed class IX as a regular student before she could be allowed to undertake examination for class X held by the Board. The position stands further clarified in regard to the private candidates under bye-laws no.16 and 21. The respondent no.1 did not fulfill the conditions laid for private candidates and her case would only be covered by bye-law 7.3 and not by bye-law no.10.2 of the examination bye-laws of the Board as held by the High Court. Despite the position under the bye-laws as indicated above, the High Court finally disposed of the writ petition no.426 of 1996 cursorily holding that since the respondent no.1 had appeared in the examination and her result had

9

been declared provisionally therefore, the Board was directed to declare her result of class X and to issue a fresh marks sheet without any endorsement thereon (emphasis supplied). It was completely overlooked that by order dated 1.3.1996, it was provided that the respondent no.1 was allowed to appear in examination, subject to the decision of the writ petition. Hence there was no occasion to say that since provisional result has been declared therefore, final result should also be declared with a fresh marks sheet without any endorsement thereon. The validity of the examination undertaken by respondent no.1 should have been properly scrutinized in the light of all the relevant examination bye-laws of the Board.

We also find that in writ petition no.484 of 1995, interim orders were granted permitting the filling up of the form for high-school examination. But while ultimately disposing of the petition, it was held that the writ petition had become infructuous since the examination form of the respondent no.1 had been forwarded to the Central Board of Secondary Education, Delhi and it is attributed to the respondents in the petition, that "as per the respondents". the candidate would be permitted to take part in the examination. It was, therefore, thought that no further direction was required and the matter was disposed of as infructuous. Merely forwarding of an examination form by an institution affiliated to the examining body is

no surety that the examining body would necessarily permit the candidate to undertake the examination. The forms after being sent are scrutinized and checked by the examining body.

This Court has on several occasions earlier deprecated the practice of permitting the students to pursue their studies and to appear in the examination under the interim orders passed in the petitions. In most of such cases it is ultimately pleaded that since the course was over or the result has been declared, the matter deserves to be considered sympathetically. It results into very awkward and difficult situations. Rules stare straight into the face of the plea of sympathy and concessions, against the legal provisions. A few decisions on the point may be perused. In C.B.S.E. & Anr. Vs. P.Sunil Kumar & Ors., 1998(5) SCC page 377, the institutions whose students were permitted to undertake the examination of the Central Board of Secondary Education were not affiliated to the Board, hence the students were not entitled to appear in the examination. They were, however, allowed to appear in the examination under the interim orders granted by the Court in contravention of the rules and regulations of the Board. The High Court considering the matter sympathetically had not interfered, but this Court observed thus :

“....But to permit students of an unaffiliated institution to appear at the examination conducted by the Board under orders of the Court and then to compel the Board to issue certificates in favour of those who have undertaken examination would tantamount to subversion of law and this Court will not be justified to sustain the orders issued by the High Court on misplaced sympathy in favour of the students....”

The order of the High Court was set aside. Another decision reported in 1993 (4) SCC 401, Guru Nanak Dev University v. Parminder Kr.

Bansal, a three judge bench decision, was relied upon in the case of Sunil

Kumar (supra). A passage from the above noted decision was also quoted

therein which reads as follows :

“We are afraid that this kind of administration of interlocutory remedies, more guided by sympathy quite often wholly misplaced, does no service to anyone. From the series of orders that keep coming before us in academic matters, we find that loose, ill-conceived sympathy masquerades as interlocutory justice exposing judicial discretion to the criticism of degenerating into private benevolence. This is subversive of academic discipline, or whatever is left of it, leading to serious impasse in academic life. Admissions cannot be ordered without regard to the eligibility of the candidates. Decisions on matters relevant to be taken into account at the interlocutory stage cannot be deferred or decided later when serious complications might ensue from the interim order itself. In the present case, the High Court was apparently moved by sympathy for the candidates than by an accurate assessment of even the prima facie legal position. Such orders cannot be allowed to stand. The courts should not embarrass academic authorities by themselves taking over their functions.”

Yet another decision referred to is reported in (1986) 2 SCC 667,

A.P.Christians Medical Educational Society Vs. Government of Andhra



IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4034 OF 2001

( From the Judgment and Order dated 7.12.99 of the Allahabad High Court in S.A.No.450 of 1998)

Ram Preeti Yadav

..Appellant

v.

U.P.Board of High School and  
Intermediate Education and Ors.

..Respondents

THE 3RD DAY OF SEPTEMBER, 2003

Present:

Hon'ble the Chief Justice  
Hon'ble Mr.Justice S.B.Sinha

Y.P.Singh, Chatanya Siddharth, Mukesh K.Sharma and Debasis  
Misra, Advs. for the Appellant

Dinesh Dwivdi, Sr.Adv., S.Bhatnagar, Navin Prakash and  
Kamlendra Mishra, Advs. with him for the Respondents,

ORDER

The following Order of the Court was delivered:

\*CP\*





IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
CIVIL APPEAL NO. 4034 OF 2001

Ram Preeti Yadav

..Appellant(s)

vs.

U.P. Board of High School &  
Intermediate Education & Ors.

..Respondent(s)

O R D E R

In the year 1984, respondent No. 3 herein Mahendra Pratap Yadav appeared as a private candidate in the Intermediate Examination conducted by U.P. Board of High School & Intermediate Education from Janta Inter College, Azamgarh (U.P.). When the results of Intermediate Examination of the year 1984 were declared, the result of respondent No. 3 was shown as withheld as a suspected case of using unfair means. He was issued a provisional mark-sheet without showing that his result for Intermediate Examination has been withheld. It is really surprising that such a mark-sheet was issued to the respondent No. 3 by the Principal of the College inasmuch as his result was admittedly directed to be

withheld by respondent No. 1. Curiously enough, in another provisional marks-sheet which was issued on or about 1.9.1986 by the Principal of the College the word "W.B." i.e. result withheld finds place. It also stands admitted that the respondent No. 3 did not apply for nor was given any final marks-sheet nor any certificate of passing the examination. It appears that on the basis of the provisional marks-sheet respondent No. 3 took his admission in B.A. without disclosing the fact that his result has been withheld and passed the B.A. Examination as well as M.A. Examination. Subsequently, he also got employment as a Teacher in Mathura Inter College, Naharpur, Distt. Azamgarh. It appears that in the year 1993 some inquiry was made as regards the passing of the Intermediate Examination by respondent No. 3. The inquiry continued for some time and it is under such circumstances the Principal of Janata Inter College informed respondent No. 3 on 16.10.1996 that his result of Intermediate Examination of the year 1984 was cancelled.

It is at this stage respondent No. 3 filed a petition under Article 226 of the Constitution challenging cancellation of his result of Intermediate Examination of the year 1984, inter alia, on the ground

(i) that he was not afforded any opportunity of hearing before cancellation of his Examination; (ii) that the cancellation after more than 10 years was wholly arbitrary and illegal; and (iii) that he having passed the B.A. and M.A. Examinations had secured appointment as a Teacher in the College and as such equity demands that the order cancelling the result of his Intermediate Examination of the year 1984 be set aside. A learned Single Judge of the Allahabad High Court was of the view that in the instant case if the result of respondent No. 3 herein of Intermediate Examination is allowed to be shown as cancelled his career would be ruined and since he had passed the High School Examination in First Division, B.A. Examination in Second Division and M.A. Examination in First Division and by and large his academic career is brilliant, the cancellation of his result is unreasonable. Consequently, the writ petition was allowed and order of cancellation of result of Intermediate Examination was set aside. Aggrieved, the appellant who is a colleague of respondent No. 3 and is working in the same Institution wherein respondent No. 3 is working as well as the Board of High School and Intermediate Education filed special appeals before a Division Bench of the High Court. The Division Bench

summarily dismissed the appeals. It is against the said judgment and order, the appellant is in appeal before us.

The learned counsel appearing on behalf of the appellant would submit that having regard to the admitted fact that the respondent No. 3 did not pass his Intermediate Examination, he could not have been appointed and consequently the question of considering his case for promotion does not arise. The learned counsel would submit that in a case of mass copying, it may not be possible to comply with the principles of natural justice.

Mr. Dinesh Dwivedi, the learned senior counsel appearing on behalf of the first respondent, supported the case of the appellant and would further draw our attention to the statements made in the counter-affidavit filed by the Board of High School & Intermediate Education to the effect that result of respondent no. 3 of Intermediate Examination of the year 1984 was cancelled on 6.1.1985 after giving an opportunity of hearing to him.

It was urged that the said information was given as per practice to the Centre for its communication to respondent No. 3 and further the Board was not required

to inform each candidate individually about the cancellation of the result.

The learned counsel appearing on behalf of respondent No. 3, however, on the other hand, would submit that keeping in view the peculiar facts and circumstances of this case, the ends of justice will be met if the first respondent is hereby directed to give a post-decisional. The learned counsel would contend that it is a fit case wherein equities should be adjusted keeping in view the fact that respondent No. 3 has now passed his B.A. and M.A. Examinations. In the alternative, it was urged, this Court may direct the first respondent to allow the respondent No. 3 to appear at the Intermediate Examination afresh.

Having heard the learned counsel for the parties, we are of the opinion that the impugned judgment cannot be sustained.

Respondent No. 3 himself in his counter-affidavit has drawn this Court's attention to a judgment of the Allahabad High Court dated 19<sup>th</sup> September, 1983 relating to withholding of result by the first respondent, wherein it was directed:

"In cases of mass copying the Board will pass the final order within 15

days from today and where the charge is of being caught red-handed the Board will pass final orders within six weeks from the date of the candidate give his explanation. In any case, in which the Board is unable to pass final orders within the aforesaid period, it will forth with give to the respective candidates their marks sheets provisionally. In each case where the marks sheet is given provisionally, the Board may make the requisite endorsement."

(emphasis supplied)

Not only respondent No. 3 was aware of the said judgment, it is also implicit that the provisional mark-sheet was given to him on the basis thereof. We, therefore, in this situation fail to understand as to how a mark-sheet without the words "W.B." could be handed over to respondent No. 3 by the Principal of the College. Respondent No. 3 presumably was aware of the entire fact situation. In that view of the matter, he now cannot, in our opinion, plead his ignorance about the entire fact. It is expected that a student who has taken admission on the basis of a provisional mark-sheet would keep a watch over the entire situation and would make repeated enquiries as to what actions have been taken by the first respondent herein in the matter and why final mark-sheet has not been issued.

It is also a matter of great suspicion as to how another marks-sheet was issued in his favour on 1.9.1986 with the words "W.B". particularly when the Principal of the College admittedly was made known about the order dated 1.9.1985 passed by the first respondent cancelling the examination of respondent No. 3. Thus, it is evident that a fraud was committed. Respondent No. 3 is the sole beneficiary to the said fraud and it, as such, must be presumed that he was a party thereto.

In its counter-affidavit, the first respondent inter alia stated:

"It is stated that the respondent No. 3 i.e. Sri Mahendra Pratap Singh appeared in intermediate examination of the year 1984 bearing Roll No. 575203, the result of the respondent No. 3 was withheld on account of mass copying under W.B. Category. The inquiry was made and the charges were framed against him. On hearing the matter and given opportunity to explain the respondent, and Nistaran Samiti duly constituted by the Board took decision dated 6.1.1985 to cancel the result of Intermediate for the year 1984. It was duly served to the principal concerned to convey with the decision taken by the Board. It was expected of the respondent No. 3 to get aware the decision dated 6.1.1985 of mass copying at that time. He did not care to know the decision and he further studied and got through the higher education. He obtained service appointment fraudulently with Sri

Mathura Inter College, Naharpur, Azamgarh ignoring the decision dated 6.1.1985. After a lapse of 12 years with collusion of the principal Janta Inter Higher Secondary School, Mahul Azamgarh, he received a letter dated 16.10.1996 in which cancellation of the Intermediate examination of the year 1984 of the respondent No. 3 was informed."

Apart from the fact that the marks-sheets issued by the Principal in the years 1984 and 1986 speak differently, by no stretch of imagination it can be presumed that even when the second marks-sheet in the year 1986 was issued, respondent No. 3 was not aware of the order dated 6.1.1985 passed by the first respondent.

Fraud is a conduct either by letter or words, which induces the other person, or authority to take a definite determinative stand as a response to the conduct of former either by words or letter. Although negligence is not fraud but it can be evidence on fraud. [See Derry Vs. Peek (1889) 14 AC 337].

In Lazarus Estate Vs. Berly [(1956) 1 All ER 341] the Court of Appeal stated the law thus:

"I cannot accede to this argument for a moment "no Court in this land will allow a person to keep an advantage which he has obtained by fraud. No judgment of a Court, no order of a



Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything". The Court is careful not to find fraud unless it is distinctly pleaded and proved; but once it is proved it vitiates judgments, contracts and all transactions whatsoever."

In S.P. Chengalvaraya Naidu Vs. Jagannath [(1994) 1 SCC 1], this Court stated that fraud avoids all judicial acts, ecclesiastical or temporal.

Furthermore, it is surprising as to why the Principal of the College issued the letter dated 16-10-1996 in favour of Respondent No. 3 stating:

"Your intermediate result which was W.B. and with held. On your request several time I also write to the U.P. Board of Intermediate Education, Allahabad. When no reply was received then I sent the person to know the position.

I am sorry to inform you on the basis of information received from the U.P. Board of Intermediate Educational Allahabad that your W.B. result of intermediate examination with held for year 1984 with roll No. 575203 has been cancelled. Make note of it that the temporary posting by me is hereby cancelled."

The said letter was considered to have given rise to a fresh cause of action in favour of the respondent No. 3

mass copying the principles of natural justice need not be strictly complied with.

In Madhyamic Shiksha Mandal, M.P. Vs. Abhilash Shiksha Prasara Samity and Others [(1998) 9 SCC 236] this Court observed:

"In the face of this material, we do not see any justification in the High Court having interfered with the decision taken by the Board to treat the examination as cancelled. It is unfortunate that the student community resorts to such methods to succeed in examinations and then some of them come forward to contend that innocent students become victims of such misbehaviour of their companions. That cannot be helped. In such a situation the Board is left with no alternative but to cancel the examination. It is extremely difficult for the Board to identify the innocent students but one has to appreciate the situation in which the Board was placed and the alternatives that were available to it so far as this examination was concerned. It had no alternative but to cancel the results and we think, in the circumstances, they were justified in doing so. This should serve as a lesson to the students that such malpractices will not help them succeed in the examination and they may have to go through the drill once again. We also think that those in charge of the examinations should also take action against their Supervisors/Invigilators, etc., who either permit such activity or become silent spectators thereto. If they feel insecure because of the strong-arm

tactics of those who indulge in malpractices, the remedy is to secure the services of the Uniformed Personnel, if need be, and ensure that students do not indulge in such malpractices."

Furthermore, it is the admitted case of the parties that the records have been weeded out. The first respondent in its counter-affidavit before the High Court not only stated so but also filed weeding schedules with a supplementary counter-affidavit.

In that view of the matter, affording an opportunity of hearing to respondent No. 3 at this stage would end in a futile exercise.

The learned Single Judge in the aforementioned situation was not correct in proceeding on the basis that the respondent No. 3 was not communicated with the result. A presumption against him must be raised particularly having regard to the fact that he had not been able to produce any material to show as to why no attempt was made by him to obtain a final marks-sheet and/or certificate for passing the examination.

We are also unable to issue any direction to the first respondent to allow the third respondent to sit at the Intermediate Examination at this stage; having regard to the fact that the relevant rules in this regard have

not been placed. We may, however, observe that if he is entitled to take the said Examination in law, he may be permitted.

Further, we find that there is no equity in favour of respondent No. 3, inasmuch as he knew that his result has been withheld because of the allegation of having used unfair means in the Examination. Suppressing this fact, he took admission in B.A. and studied further.

We are, therefore, of the view that the High Court committed error in allowing the writ petition filed by respondent. No. 3. Consequently, the order under challenge and that of the learned Single Judge, are set aside. The appeal is allowed. There shall be no order as to costs.

.....CJI  
(V.N. KHARE)

.....J  
(S.B. SINHA)

New Delhi;  
September 3, 2003.

REPORTABLE-486/2003

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1807 OF 2003

( From the Judgment and Order dated 5.2.2003 of the Rajasthan  
High Court in D.B.C.S.A.(W) No.503 of 2002)

Harish Verma and Ors.

..Appellants

v.

Ajay Srivastava and Anr.

..Respondents

(With C.A.Nos.1808, 7405, 7406-7430 of 2003)

THE 16TH DAY OF SEPTEMBER, 2003

Present:

Hon'ble Mr.Justice R.C.Lahoti

Hon'ble Mr.Justice Ashok Bhan

Ms.Indu Malhotra, Mrs.Pooja Chandra, Maninder Singh,  
Mrs.Pratibha M.Singh, Ankul Talwar, Angad Mirdha, Salman  
Khursheed, Ajay Choudhary, Ranji Thomas, Mrs.Bharati  
Upadhyaya, A.K.Shukla, V.N.Raghupathy, Manoj Swarup,  
Ms.Lalita Kohli, Anubhav Kumar, Advs. for the Appearing parties.

JUDGMENT

The following Judgment of the Court was delivered:

\*CP\*



**IN THE SUPREME COURT OF INDIA**  
**CIVIL APPELLATE JURISDICTION**  
**CIVIL APPEAL NO. 1807 OF 2003**

**Harish Verma and Ors.**

**... Appellants**

**Versus**

**Ajay Srivastava & Anr.**

**... Respondents**

**WITH**

**C.A. No. 1808/03.**

**C.A.Nos. 7406-30/2003**

**C.A. Nos. 7405/2003 @ (SLP(C) Nos. 4965/03 and 14367-91/03)**

**J U D G M E N T**

**R.C. Lahoti, J.**

Leave granted In SLP (C) Nos. 4965/03 and 14367-91/03.

In exercise of the powers conferred by Section 33 read with Section 20 of the Indian Medical Council Act, 1956, the Medical Council of India has, with the previous sanction of the Central Government, made the regulations called "the Post Graduate Medical Education Regulations 2000" (hereinafter the Regulations, for short). Regulation 9, relevant for our purpose, provides as under:-

## 9. SELECTION OF POSTGRADUATE STUDENTS

- (1) Students for postgraduate medical courses shall be selected strictly on the basis of their academic merit.
- (2) For determining the academic merit, the university/institution may adopt any one of the following procedures both for degree and diploma courses:-
  - (i) On the basis of merit as determined by a competitive test conducted by the State Government or by the Competent authority appointed by the State Government or by the university/group of universities in the same State; or
  - (ii) On the basis of merit as determined by a centralized competitive test held at the national level; or
  - (iii) On the basis of the individual cumulative performance at the first, second and third MBBS examinations, if such examinations have been passed from the same university; or

Provided that wherever entrance test for postgraduate admission is held by a state government or a university or any other authorized examining body, the minimum percentage of marks for eligibility for admission to postgraduate medical course shall be 50 percent for general category candidates and 40 percent for the candidates belonging to Scheduled Castes, Scheduled Tribes and Other Backward Classes:

Provided further that in non-government institutions fifty percent of the total seats shall be filled by the competent authority and the remaining fifty percent by the management of the institution on the basis of merit.

**(emphasis supplied)**



The first proviso to Regulation 9 in its present form was introduced with effect from 20.9.2001. Earlier the first proviso required the minimum percentage of marks for eligibility as 50 per cent for all the categories of candidates.

In the first week of March 2002 the University of Rajasthan published a notification announcing the holding of pre-PG examination on 21.4.2002. The minimum qualifying marks were notified as 50 per cent for general category candidates and 40 per cent for SC/ST/OBC candidates consistently with the first proviso to Regulation 9. The examination was held on 21.4.2002. The result of the examination was declared on the next day.

On 29.4.2002 several in-service doctors (i.e. the graduate doctors who were serving under the State of Rajasthan) filed a writ petition laying challenge to the constitutional validity of the first proviso to Regulation 9 and seeking its being declared ultra vires in its applicability to in-service candidates. In the alternative, it was prayed that the first proviso aforesaid be declared as inapplicable insofar the seats meant for in-service candidates in postgraduate medical courses are concerned. Consistently with such declaration it was prayed that the result be declared afresh and that the in-service candidates be declared to have qualified for entrance in PG degree/diploma courses without insisting on the prescribed minimum qualifying marks. Several such writ petitions were filed. It is significant to note that the

writ-petitioners before the High Court were all such doctors who were serving in the State services and who had participated in the pre-PG examination but had failed in securing the minimum qualifying marks as prescribed by the first proviso to Regulation 9 and the notification dated 2<sup>nd</sup> March, 2002. The High Court issued rule nisi and also passed an interim order to the effect that the unfilled seats in the in-service category shall be kept vacant during the pendency of the proceedings.

The State of Rajasthan, the University of Rajasthan and the Medical Council of India were all impleaded as parties. In their respective counter-affidavits they supported the validity of Regulation 9 along with its provisos and submitted that the High Court ought not to modify or make departure from the statutory regulations framed by the Medical Council of India and the standards laid down by it in the interest of medical profession.

A learned Single Judge of the High Court who heard a batch of 44 similar writ petitions directed all the petitions to be dismissed upholding the validity of the impugned Regulation.

The writ-petitioners, being aggrieved by the judgment of the learned Single Judge, preferred several intra-court appeals under Section 18 of the Rajasthan High Court Ordinance. On 28.8.2002 the Division Bench framed the following two questions of law and opinion

the questions to be of considerable importance directed all the appeals to be placed for hearing before a Full Bench:-

1. Whether any reserved quota could not be separately specified for In-service candidates; merely because such In-service category is not mentioned in Article 15(4) of the Constitution of India?
2. Whether the prescribing of a separate quota for in-service candidates withstands the test of reasonable classification under Article 14 of the Constitution of India?

On 5.2.2003, vide the judgment impugned herein, the High Court has allowed the appeals and set aside the judgment of the learned Single Judge. During the course of its judgment the Full Bench has held that the Regulations framed by the Medical Council of India have only a persuasive value and do not have any binding force in so far as the State Government is concerned. The State has the power to prescribe a lower percentage of marks for In-service candidates. Regulation 9 does not apply to in-service candidates. However, the Full Bench held that as the minimum qualifying marks for in-service candidates could not have a wide disparity with the marks prescribed for general category candidates. It directed that it shall be open to the State Government to go ahead with the admission

of in-service candidates to the postgraduate courses on the basis of such percentage of qualifying marks which may be lower than 50 per cent but not below 40 per cent, which is the minimum eligibility percentage prescribed for the reserved category candidates.

These are the appeals filed by special leave by the general category candidates and the Medical Council of India.

On 24.2.2003 leave to appeal was granted under Article 136 of the Constitution. The appellants had sought staying of the operation of the judgment of the Full Bench of the High Court being stayed. Prayer for interim relief being allowed ex-parte was refused by the Court and notice was directed to be issued to the respondents. On 4.4.2003 counseling was held and 126 seats were filled. 75 students from the In-service category who had secured marks between 40 and 50 per cent participated in the counseling and have been allotted seats, subject to an undertaking filed by each one of them that the judgment of this Court whenever pronounced shall be binding on them. During the pendency of these appeals the process of admission against PG seats for the year 2003 has been completed. 80 in-service candidates have been allotted seats, out of whom only 18 candidates have cleared the 50 per cent eligibility criteria. The remaining 62 candidates are ineligible as per the first proviso to Regulation 9. The counseling for 2003 candidates has been held on 28/29.8.2003.

When the matter came up for hearing on 19.8.2003 it was brought to the notice of the Court that various candidates who have been declared successful at the pre-PG examination in accordance with the judgment of the Full Bench of the High Court and who may be dislodged in the event of the appeals being allowed were not noticed. The Secretary, Medical and Health Department, State of Rajasthan, was directed to notify on the Notice Board of all the medical colleges in the State of Rajasthan the factum of filing of these appeals and of their coming up for hearing, putting the candidates on notice that they could enter appearance and participate in the hearing, if so advised, so as to defend themselves. That compliance has been done. However, none of such in-service candidates have chosen to appear.

We have heard Ms. Indu Malhotra, the learned counsel for the appellants (general category non-service doctors), Mr. Salman Khursheed, the learned counsel for the private respondents who were the writ-petitioners in the High Court, Mr. Ranji Thomas, the learned counsel for the State of Rajasthan, Mr. Maninder Singh, the learned counsel for the Medical Council of India, and all other learned counsel appearing for the parties.

Ms. Indu Malhotra, the learned counsel for the appellants (private respondents in the High Court) has carried the Court through the judgment of the Full Bench of the High Court to demonstrate the gross error of law unwittingly committed by the High Court in ignoring

the majority view of the constitution Bench decision of this Court in **Dr. Preeti Srivastava and Anr. Vs. State of M.P. & Ors.** (1999) 7 SCC 120. Instead, the learned counsel submitted, the Full Bench has quoted a few passages from the minority opinion from **Dr. Preeti Srivastava's case** (supra) which is at variance with the majority opinion, and therefore, the judgment stands vitiated. It was further submitted that a recent decision of this Court in **The State of Madhya Pradesh & Ors. Vs. Gopal D. Tirthani & Ors.** – JT 2003 (6) SC 204 clinches the issue and applies squarely to the facts of the present case, and therefore also the impugned judgment has to be reversed. We find merit in the submissions so made.

It will be useful to extract and reproduce the law laid down by the majority consisting of four learned Judges speaking through Sujata Manohar, J. In **Dr. Preeti Srivastava's case** (supra). It was held

(1) the Indian Medical Council Act, 1956, especially the provisions contained in Sections 16 to 20 of the Act empower the Council to prescribe the minimum standards of medical education required for granting recognized medical qualifications other than post-graduate medical qualifications by the Universities or medical institutions, as also to prescribe the minimum standards of postgraduate medical education. The Universities must necessarily be guided by the standards prescribed under Section 20(1) if their degrees or diplomas are to be recognized under the Medical Council of India Act. An earlier

decision of this Court in Ajay Kumar Singh and Ors. Vs. State of Bihar and Ors. - (1994) 4 SCC 401 taking the view that the standards of postgraduate medical education prescribed by the Medical Council of India are merely directory and the Universities are not bound to comply with the standards so prescribed was overruled (para 55);

(ii) The Medical Council Regulations have statutory force and are mandatory. The Act contemplates the Medical Council of India having been set up as an expert body to control the minimum standards of medical education and to regulate their observance. It has implicit power to supervise the qualifications or eligibility standards for admission to medical institutions. The Medical Council has to keep overall vigilance to prevent sub-standard entrance qualifications for medical courses. These observations apply equally to postgraduate medical courses (para 57);

(iii) A Common Entrance Examination envisaged under the Regulation framed by the Medical Council of India for postgraduate medical education requires the fixing of minimum qualifying marks for passing the examination since it is not a mere screening test;

(iv) Whether any lower minimum qualifying marks (than the one prescribed by the first proviso to Regulation 9) can be prescribed at the postgraduate level of medical education is a question which must be

decided by the Medical Council of India since it affects the standards of postgraduate medical education. Prescribing the percentage of 20 per cent for the reserved category and 45 per cent for the general category is not permissible; the same being unreasonable at the postgraduate level and contrary to the public interest.

However, the Full Bench of the High Court has referred to several observations made vide para 77 and para 116 of Dr. Preeti Srivastava's case (supra) wherein the dissenting opinion has disagreed with the conclusions reached by the majority that the fixing of minimum qualifying marks for passing the entrance test for postgraduate course is concerned with the standards of postgraduate medical education. Vide para 116, the dissenting opinion has held that the Regulation and guidelines given by the Medical Council of India are persuasive and do not have any binding force, which are to be kept in view only broadly and that it is permissible for the State authorities to short-list the eligible and qualified MBBS doctors for being considered for admissions to postgraduate medical courses in the institutions of the State, and for the purpose of such short-listing full pleasure is available to the State authorities to exercise legislative or executive power. With respect to the learned Judges constituting the Full Bench of the High Court, we have to say that they could not have relied on the dissenting opinion of one learned judge, overlooking the majority



opinion which is the law laid down by the Constitution Bench and has the binding force.

The Issue arising for decision before the Full Bench of Rajasthan High Court, arose for decisions in a very similar background in **The State of Madhya Pradesh & Ors. Vs. Gopal D. Tirthani & Ors.** [JT 20003 (6) SC 204]. Dealing with the question of why a common entrance test is necessary and why an exception cannot be carved out in favour of in-service candidates by lowering the standards below the ones permitted by the Medical Council of India, this Court, following **Dr. Preeti Shrivastava's case**, opined as under:-

"A pass mark is not a guarantee of excellence. There is a great deal of difference between a person who qualifies with the minimum marks and a person who qualifies with high marks. If excellence is to be promoted at the postgraduate level, the candidates qualifying should be able to secure goods marks while qualifying. Attaining minimum qualifying marks has a direct relation with the standards of education. Prescription of qualifying marks is for assessment of the calibre of students chosen for admission. If the students are of a high calibre, training programmes can be suitably moulded so that they can receive the maximum benefit out of a high level of teaching. If the calibre of the students is poor or they are unable to follow the instructions being imparted, the standard of teaching necessarily has to be lowered to make them understand the course which they have undertaken; and it may not be possible to reach the levels of education and training which can be attained with a bright group. The assemblage of students in a particular class should be within a reasonable range of variable calibre and intelligence, else the students will not be able to move along with each other as a common class. Hence the need for a common

entrance test and minimum qualifying marks as determined by experts in the field of medical education."

It was held that the selection of students who had secured marks less than the minimum marks prescribed by the Medical Council of India's Regulation on account of reduction in the minimum marks in the entrance examination made by the State Government, was liable to be struck down and ignored. If the State has a case for making a departure from the standards laid down by the Medical Council of India or for carving out an exception in favour of any identifiable class of persons, then it is for the State to represent to the Central Government and/or the Medical Council of India and make out a case of justification before the Medical Council of India. "The in-service candidates may have been away from academics and theories because of being in service. Still, they need to be assessed as eligible for entrance in P.G. For taking up such examination, they must either keep updating themselves regularly or concentrate on studies preparatory to entrance examinations but without sacrificing or compromising with their obligations to the people whom they are meant to serve on account of being in State services."

Out of the several conclusions summed up by the Court the one relevant for the purpose of the present case is — "There can be only one common entrance test for determining eligibility for post

graduation for in-service candidates and those not in service. The requirement of minimum qualifying marks cannot be lowered or relaxed contrary to the Medical Council of India regulations framed in this behalf."

The Court has observed that subject to securing the minimum qualifying marks if the in-service candidates formulate a class by themselves for whom a separate channel of entry has been carved out then within the group there may be scope for assigning weightage for rural service rendered, for the purpose of determining order of merit inter se, but such weightage cannot be utilized for the purpose of relaxing the condition as to minimum qualifying marks as prescribed by the Medical Council of India.

The decision of the Full Bench of the High Court, having been rendered in ignorance of the binding law laid down by the majority opinion in the Constitution Bench decision of this Court in Dr. Preeti Srivastava and Anr. (supra) and also being inconsistent with the decision of this Court in the case of Gopal D. Tirthani & Ors. (supra), is liable to be set aside. The appeal is allowed. The impugned judgment of the Full Bench of the High Court of Rajasthan is set aside and the judgment given by the learned single Judge is restored.

As a consequence, the admissions given to such of the in-service candidates who have secured marks less than the minimum

prescribed by Regulation 9 framed by the Medical Council of India are struck down and set aside. The counseling shall have to be done afresh to the extent necessary. We are conscious of the fact that there would be some delay in commencement of post-graduation studies and to some extent the 2002 and 2003 batches would overlap. However, that is a situation which cannot be avoided. It is an inevitable consequence for which the successful candidates for the year 2002 and 2003, i.e. those who will be held entitled for admission in post-graduation courses of studies consequent upon this judgment, cannot be made to suffer for no fault of theirs. It will be for the State of Rajasthan, if necessary then in consultation with the Medical Council of India, to sort out the difficulties and to run the regular courses of the studies.

No order as to the costs.

.....J.  
(R.C. Lahoti)

.....J.  
(Ashok Bhan)

New Delhi;  
September 16, 2003.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

I.A. NOS. 5-6 AND 7-14

IN

CIVIL APPEAL NOS. 599-600 OF 2002

( From the Judgment and Order dated 23.11.2001 of the Delhi High Court in I. P A Nos 299 and 301 of 2001)

P C Kesavan Kuttynayar

Appellant

v.

Harish Bhatta and Ors

Respondents

( With W P (C) No 317 of 2000)

THE 23RD DAY OF SEPTEMBER, 2003

Present:

Hon'ble Mr Justice M B Shah

Hon'ble Mr Justice Ashok Bhan

Soli J Sorabjee, Attorney General, Raju Ramachandran, Additional Solicitor General, Harish N. Saive, Sr. Adv. (A.C.), K.K. Venugopal, M.N. Krishnamani, Madan Bhatia, Rakesh Dwivedi, Sr., Advs. Manish Singhvi, Prateek Jalan, Amit Mahajan, D S Mahra, A Mariarputham, Ms. Aruna Mathur, Maninder Singh, Ms. Pratibha M. Singh, Angad Mirdha, Ankur Talwar, Annam D.N Rao, Avik Dutta, Santanu Ghosh, V K Monga, Nageshwar Pandey, Anup Sinha, Pramod Dayal, Raju Subramaniam, Ms. Jayamala Godbole, Sanand Ramakrishnan, Ms. Sweetie Manchanda, P.H. Parekh, Ms. Indu Mallhotra, Ms. J.S. Wad, G S Chatterjee, Raja Chatterjee, I. Nageswara Rao, Rajeev Sharma, Pawan, Ms. Sunita Sharma, Ms. Rekha Pandey, Ms. Krishna Sarma, V.K. Siddharthan, Anil Srivastava, Jyoti Dutt, Ms. Sunita R. Singh, B B Singh, Ms Kamini Jaiswal, Ms Shomila Bakshi, Ms Geetanjali Mohan, Prakash Shrivastava, Ms. A. Subhashini, Ms. Monika Bapna, J.S. Atti, Anis Suhrawardy, B.S. Banthia, W.A. Nomani, Ravindra

K Adsure, Adv for Mukesh K Giri, KH Nobin Singh, M Gireesh Kumar, Ranjan Mukherjee, Ms.Sumita Hazarika, U.Hazarika, Kamal Shankar, Ms.Sunita Sharma, D.N.Ray, J.R.Das, Ms.Swetaketa Mishra, Gourang Biswal, Ms Mounshumi gahlot, Ms Naresh Bakshi, R S Suri, V.G.Pragasam, Anurag D.Mathur, P.N.Ramalingam, V.Balaji, Gopal Singh, Sandeep Singh, Ashok K.Srivastava, Ms.Rachna Srivastava, Rohit Singh, Tara Chandra Sharma, Ms Neelam Sharma, Ejaz Maqbool, Dinesh Kumar Garg, Yakesh Anand, Sanjeev Anand, S.Srinivasan, M.B.Rama Subba Raju, Ms.S.Sunita, V.Sudeer, Ms.Ruby Singh Ahuja, Radri Prasad Singh, Uldai Umesh Lalit, Sushil Kumar Jain, D N Ray, Ms.Sumita Ray, S.N.Bhat, Vipul Maheshwari, P.K.Chakravarti, D.Stephen K.Yanthan, Ms.Hemantika Wahi, Advs. with them for the appearing parties

#### ORDER

The following Order of the Court was delivered:

\*CP\*

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE/ORIGINAL JURISDICTION

I.A. Nos. 5-6 & 7-14

IN

CIVIL APPEAL Nos. 599-600 OF 2002

P.C. Kesavan Kuttynayar ... Appellant

*Versus*

Harish Bhalla & Others ... Respondents

WITH

WRIT PETITION (C) No.317 OF 2000

Malay Ganguly ... Petitioner

*Versus*

Medical Council of India & Others ... Respondents

ORDER

Heard the learned Amicus Curiae and the counsel for the parties.

In pending Appeals learned Amicus Curiae is required to approach this Court for appropriate directions including the manner of

working of the Ad-hoc Committee in the matter of recognition, renewal including grant of permission in respect of medical colleges.

Reasons for seeking this relief is, as contended by the senior counsel Mr. Salve and Mr. Venugopalan, that for some reason Central Government granted permission to increase the strength of students in medical colleges in violation of Section 10A of the Indian Medical Council Act, 1956 (hereinafter referred to as the "Act") and the Regulations framed by Medical Council of India.

This *Ad-hoc* Committee was appointed by this Court's order dated 20<sup>th</sup> November, 2002. Relevant part of this order is as under:--

".... For enhancing the confidence of the people in the forthcoming of the Medical Council of India, which is having wide powers under the Medical Council Act, 1956, we order accordingly. We appoint a Committee of four eminent doctors namely, Dr. N. Rangabashyam of Chennai, Prof. P.N. Tandon of New Delhi, Dr. S.K. Bhansali of Mumbai and Dr. (Ms.) S. Kantha of Bangalore, as members of *Ad-hoc* Committee to assist and nominate the work of the Medical Council of India. The *Ad-hoc* Committee would work harmoniously and in full cooperation with the Executive Committee of the Council. The Committee would associate itself particularly in selection and appointment of Inspectors and scrutinize their reports and making recommendations for grant of recognition to medical college.

If any member of the *Ad hoc* Committee in course of working finds any practical or legal difficulty, it would



be open for him/them to approach this Court for appropriate orders through learned senior counsel Mr. Harish N. Salve (*Amicus Curiae*). It would also be open to them to make recommendations how the functioning of the Executive Committee can be made more effectively and prompt. ....”

Thereafter, the *Ad hoc* Committee started its work in harmony with the Executive Committee of Medical Council of India overseeing, *inter alia*, the process of inspection of colleges and dealing with the recommendation to be made for the recognition / grant of permission to such colleges.

The contention which is raised in the present I.As. is with regard to the exercise of power by the Central Government by bypassing the M.C.I. as well as the provisions of Section 10A of the Act.

This Court has repeatedly considered the provisions of the Act and the held that statutory provisions and rules prescribed for Medical education should be strictly adhered to. As early as in the case of *A.P. Christians Medical Educational Society v. Government of A.P.* [(1986) 2 SCC 667 (p.678 para 10)], the Court observed thus:—

“Any direction of the nature sought by Shri Venugopal would be in clear transgression of the provisions of the University Act and the Regulations of the University. We cannot by our fiat direct the

University to disobey the statute to which it owes its existence and the regulations made by the University itself. *We cannot imagine anything more destructive of the rule of law than a direction by the Court to disobey the laws.*"

Thereafter, in 1994 again, this Court considered this aspect in *State of Punjab v. Renuka Singla* [(1994) 1 SCC 175 (p.178 para 8)] and held thus:—

"The High Courts or the Supreme Court cannot be generous or liberal in issuing such directions which in substance amount to directing the authorities concerned to violate their own statutory rules and regulations, in respect of admissions of students. Technical education, including medical education, requires infrastructure to cope with the requirement of giving proper education to the students, who are admitted. Taking into consideration the infrastructure, equipment, staff, the limit of the number of admissions is fixed either by the Medical Council of India or Dental Council of India. The High Court cannot disturb that balance between the capacity of the institution and number of admissions, on 'compassionate ground'. The High Courts should be conscious of the fact that in this process they are affecting the education of the students who have already been admitted, against the fixed seats, after a very tough competitive examination. There does not appear to be any justification on the part of the High Court, in the present case, to direct admission of respondent no.1 on 'compassionate ground' and to issue a fiat to create an additional seat which amounts to a direction to violate Section 10-A and Section 10-B(3) of the Dentists Act."

The reason for taking this much caution is well reflected in the decision rendered by this Court in *Medical Council of India v. State of Karnataka* [(1998) 6 SCC 131 (p.157 para 29) wherein the Court held as under:—

*“29. A medical student requires gruelling study and that can be done only if proper facilities are available in a medical college and the hospital attached to it has to be well equipped and the teaching faculty and doctors have to be competent enough that when a medical student comes out, he is perfect in the science of treatment of human beings and is not found wanting in any way. The country does not want half-baked medical professionals coming out of medical colleges when they did not have full facilities of teaching and were not exposed to the patients and their ailments during the course of their study.”*

This case was referred to with approval in case of *K.S. Bhoir v. State of Maharashtra & Others* [(2001) 10 SCC 264]. The Court also held that the compliance with the requirements under the Act and the regulations being mandatory in absence of their compliance, no permission could be granted by the Central Government for the increase in admission capacity in any course in any Medical College. The Court further held that for one time increase in admission capacity the colleges should have submitted the scheme prepared in

accordance with the Act and the Regulations to the Central Government.

Despite the aforesaid law, it is contended by the learned senior counsel Mr. Venugopal for the Medical Council as well as by the learned *Amicus Curiae* Mr. Salve that the Central Government by-passed the Medical Council and the Act and had issued various orders granting permissions to increase the strength of the students in some colleges or renewal of permission to the Medical Colleges. As against this, Mr. Rakesh Dwivedi, learned senior counsel for the Union of India submitted that the Central Government has neither by-passed the Medical Council nor the statutory requirements for grant of permission to increase the strength of the students in existing medical colleges / renewal of permission for the college.

No doubt for deciding the question—whether the permission granted by the Central Government is without complying with the statutory requirement and thus violative of Sections 10A and 10B of the Act requires consideration.

However, *prima facie*, there appears to be substance in what is contended by the learned senior counsel for the Medical Council as

well as *Amicus Curiae* that on 23<sup>rd</sup> January, 2003, the Medical Council of India had brought the following to the notice of the Central Government:—

“Sir,

I am directed to inform you that inspection for renewal of permission for admission of 3<sup>rd</sup> batch of students for the academic session 2002-2003 at Government Medical College, Anantapur was carried out by the Council Inspectors on 30<sup>th</sup> & 31<sup>st</sup> July, 2002 and the inspection report was considered by the Executive Committee at its meeting held on 5.8.2002. On going through the inspection report the Committee observed that 34 of the faculty members i.e. 6 – Professions, 16 – Readers and 12 – Assistant Professions joined the institution on 27.7.2002 i.e. 3 days before the inspection after transfer from other Government Medical Colleges of the State.

In view of the above and other deficiencies pointed out in the inspection report, the Committee decided to defer the consideration of the matter for obtaining the information from the Director, Medical Education, Government of Andhra Pradesh and college authorities as to how the resultant vacancies created with the transfer of teachers from the Government Medical colleges to this college have been filled up.

On receipt of above clarification and the compliance on rectification of the deficiencies from the Director, Govt. of Andhra Pradesh the matter was again placed before the Executive Committee at its meeting held on 31.10.2002 where it was decided to verify the same by way of an inspection. Inspection to verify the compliance was carried out by the Council Inspectors on 2<sup>nd</sup> & 3<sup>rd</sup> Jan., 2003 and the compliance verification inspection report was considered by the Executive

Committee at its meeting held on 9.1.2003 where the members of the *Ad hoc* Committee appointed as per the Hon'ble Supreme Court order dated 20.11.2002 were also present. The decision taken by the Executive Committee is recorded as under for your information and necessary action:—

"The Executive Committee on perusal of the compliance verification report (2<sup>nd</sup> & 3<sup>rd</sup> Jan., 2003) of Government Medical College, Anantapur, noted that the college has already admitted students against the academic session 2002-2003 (3<sup>rd</sup> batch) without getting the permission renewed by the Central Government as under:—

- (a) 99 students including 14 NRI students against the session 2002-03.
- (b) 14 NRI students the batch 2000-01 against this session (Total 113 students)

Thus the college has not only admitted students against the said session without getting the permission renewed by the Central Government but has also increased the seats from 100 to 113 which calls for action u/s 10B of the I.M.C. Act, 1956.

The Executive Committee, therefore, decided to initiate action u/s 10B of the I.M.C. Act, 1956 against the admissions made by the college authorities for the academic session 2002-03 without getting the permission renewed by the Central Government for which the institution be directed to send a merit wise list to the Council immediately. The Committee also decided that the Central Government may be requested to take up the matter with the Secretary (Medical Education) and Director, Medical Education, Government of Andhra Pradesh to take steps to rectify the violations immediately.

Since, the college had already admitted students for the academic session 2002-03, the Committee decided not to consider the inspection report carried out for renewal of permission for admission of 3<sup>rd</sup> batch of students at Government Medical College, Anantapur."

Despite this, it appears that by order dated 21<sup>st</sup> August, 2003, the Director, Ministry of Health & Family Welfare issued the following order:

"The Secretary,  
Health, Medical and Family Welfare Department,  
Government of Andhra Pradesh,  
Hyderabad.

Sub: Increase in seats in Government Medical Colleges  
at Kurnool & Warangal during the academic year  
2003-04 – Renewal of permission – regarding.

Madam,

I am directed to refer to your letter No.11964/E1/2001-57 dated 4.8.2003 on the subject cited above and to say that it has been decided as a one time measure to allow admission of fresh batches of students in the following medical colleges against increased intake during the academic year 2003-04:—

1. Kurnool Medical College. Kurnool from 130 to 150 seats.
2. Kakatiya Medical College. Warangal from 100 to 150 seats.

This renewal of permission is subject to the condition of implementation of neutralization formula already accepted by the State Government vide their

letter 18.6.2001 (copy enclosed) and conveyed in this Department's letter of even number dated 12<sup>th</sup> July, 2001 (copy enclosed). However, the State Government shall ensure compliance of all the requirements under the MCI Regulations and any deficiencies pointed out by the Medical Council of India in respect of above medical colleges. This permission is further subject to the condition that the Government of Andhra Pradesh shall sort out the pending issues of admissions made in these colleges during the year 2002-03 with Medical Council of India."

Similar orders are produced on record to indicate that the recommendations of the Medical Council were not called for.

As against this, it has been pointed out by Mr. Rakesh Dwivedi, learned senior counsel that under Section 10A (iv) the Central Government has such powers.

*Prima facie*, we do not think that the Central Government has power to issue such permission when the college is not complying with the requirements of the regulations framed by the Medical Council of India or the requirements of the Act. As the permission is already granted and probably, it appears that the colleges might have given admissions on the basis of so called increase in the strength renewal of permission for a college, we direct the Medical Council of India to carry out further inspection to find out whether



there is compliance of the requirement of the Act and the Rules in all the colleges where increase of strength/renewal of permission for a college is permitted by the Central Government by its various orders issued in August, 2003. The Medical Council of India to carry out the inspection within a period of four weeks.

In the meantime, the Central Government is directed not to grant any further permission without following the procedure prescribed under Section 10A(i) (ii) (iii) and (vii).

For the time being, the D.G.H.S. inquiry as directed by the Central Government against Dr. Rangabashyam is stayed. However, it would be open to the aggrieved person to take appropriate action before an appropriate forum, if called for.

Stand over for four weeks.

#### **WRIT PETITION (C) No.317 OF 2000**

Heard the learned counsel for the parties.

As suggested by the learned Attorney General, the following provisions could be added in the Code of Ethics prescribed by the Medical Council of India: —

**"8.7** Where either on a request or otherwise the Medical Council of India is informed that any complaint against a delinquent physician has not been decided by a State Medical Council within a period of six months from the date of receipt of complaint by it and further the MCI has reason to believe that there is no justifiable reason for not deciding the complaint within the said prescribed period, the Medical Council of India may —

- i) impress upon the concerned State Medical Council to conclude and decide the complaint within a time bound schedule;
- ii) may decide to withdraw the said complaint pending with the concerned State Medical Council straightway or after the expiry of the period which had been stipulated by the MCI in accordance with para (i) above to itself and refer the same to the Ethics Committee of the council for its expeditious disposal in a period of not more than six months from the receipt of the complaint in the office of the Medical Council of India.

**8.8.** Any person aggrieved by the decision of the State Council on any complaint against a delinquent physician, shall have the right to file an appeal to the MCI within a period of sixty days from the date of receipt of the order passed by the said Medical Council.

Provided that the MCI may, if it is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days allow it to be presented within a further period of 60 days."

For inclusion of the said or similar provisions, Medical Council would take appropriate steps under the Act.

With regard to other issues including the aforesaid issue,  
adjourned for four weeks.

.....J.  
(M.B. SHAH)

.....J.  
(ASHOK BHAN)

New Delhi;  
September 23, 2003.



IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (C) NO. 29 OF 2003  
(Under Article 32 of the Constitution of India)

Saurabh Chaudri and Ors.

v.

Petitioners

Union of India and Ors.

Respondents

(With W.P.(C) Nos. 54, 57, 68, 69, 84, 85, 89, 91, 95, 98, 99, 100/  
2003 and C.A.No.8581 of 2003)

THE 4TH DAY OF NOVEMBER, 2003

Present:

Hon'ble the Chief Justice

Hon'ble Mr. Justice R.C.Lahoti

Hon'ble Mr. Justice B.N.Agrawal

Hon'ble Mr. Justice S.B.Sinha

Hon'ble Dr. Justice A.R. Lakshmanan

Kailash Vasdev, Shanti Bhushan, Sr.Advs., M.C.Dhingra, Ms.Gulnar Khan, S.Sadashiva Reddy, Ms.Sudha Gupta, Syed Ali Ahmad, Syed Tanweer Ahmad, Mohan Pandey, A.S.Bhasme, Sanjay Visen, Manoj K.Mishra, S.K.Bhattacharya, M.N.Shroff, A.D.N.Rao, Rajiv K.Garg, Abhijeet Chatterjee, Chanchal Kumar Ganguli, Ms.Rekha Pandey, Ms.Sunita Sharma, D.S.Mahra, Maninder Singh, Ms.Pratibha M.Singh, Ankur Talwar, Kriti Maan Singh, A.Mariarputham, Ms.Aruna Mathur, Anurag D.Mathur, Ms.Kamini Jaiswal, Ms.Shyomila Bakshi, Ashok K.Srivastava, Ashok K.Mahajan, K.R.Sasiprabhu, Adv.(NP), Ms.Krishna Sarma, Ms.Asha G.Nair, V.K.Sidharthan, Anil Srivastav, B.B.Singh, Adv.(NP), Ms.H.Wahi, Ms.Aruna Gupta, Ms.A.Subhashini, Satinder S.Gulati, Neeraj Kumar Jain, Ms.Kavita Wadia, Adv.(NP), J.S.Attri, Sanjay R.hegde, Satya Mitra, Anil K.Mihra, KH.Nobin Singh, U.U.Lalit, S.S.Shinde, Mukesh K.Giri,

Ranjan Mukherjee, Ms.Kamakshi S.Mehlwal, Adv.(NP), Nillay Dutta Adv. Generl for State of Nagaland, Ms.V.D.Khanna, S.K.Nandy, Adv.(NP), R.S.Jena, Adv.(NP), R.S.Suri, Ranji Thomas, Ms.Bharati Upadhyaya, V.N.Raghupathy, Ms.Sandhya Goswami, Adv.(NP), A.T.M.Sampath, V.Balaji, P.N.Ramalingam, Gopal Singh, Navin Prakash, A.S.Pundir, Adv.(NP), Jatinder Kumar Bhatia, T.C.Sharma, Ms.Neelam Sharma, Ms.Sunita Sharma, D.S.Mehra, Anis Suhrawardy, Ms.Shamama Anis, V.G.Pragasam, Prakash Srivastava, Ashok Mathur, Nikhil Nayyar, Gautam Narayan, Mukul Gupta, Ankur Jain, T.A.Khan, Advs. with them for the appearing parties.

### JUDGMENTS

The following Judgments of the Court were delivered:

\*CP\*

IN THE SUPREME COURT OF INDIA  
CIVIL ORIGINAL JURISDICTION  
WRIT PETITION (CIVIL) NO. 29 OF 2003

Saurabh Chaudri and Ors.

...Petitioners

Versus

Union of India and Ors.

...Respondents

WITH

WRIT PETITION (CIVIL) NOS. 54, 57, 68, 69,  
84, 85, 89, 91, 95, 98, 99 & 100 OF 2003 AND  
CIVIL APPEAL NO. 8591 OF 2003  
[Arising out of S.L.P (Civil) No. 1347 of 2002]

JUDGMENT

V.N.KHARE, CJI.

Leave granted in the Special Leave Petition.

The core question involved in these writ petitions and appeal centres round the constitutional validity of reservation whether based on domicile or institution in the matter of admission into Post Graduate Courses in government run medical colleges.

For determination of the said question factual matrix of the matter, is being noticed from Writ Petition (Civil) No.29 of 2003.

The petitioners who are 52 in number are original residents of Delhi. They joined various medical colleges out of Delhi for undertaking their MBBS Courses of studies against the 15% all-India quota on being qualified therefor in the All India Medical Entrance Examination.

The appellants intended to join the medical colleges of Delhi for their Post Graduate Medical Courses. They applied for and were granted admission forms having regard to the decision of this Court in Dr. Parag Gupta vs. University of Delhi and Others [(2000) 5 SCC 684]. In the Bulletin of Information issued by the University of Delhi, it was stated, that candidates like the appellants would be entitled for admission in Post Graduate Courses subject to the decision of a matter pending in this Court, i.e. Magan Mehrotra and Others vs. Union of India and Others. since reported in (2003)3 SCALE 101.

A three-Judge Bench of this Court in Magan Mehrotra (supra) inter alia, therein held that ~~apart~~ from institutional preference, no other preference



including reservation on the basis of residence is envisaged in the Constitution, in view of the decision of this Court in Dr. Pradeep Jain and Others vs. Union of India and Others [(1984) 3 SCC 654].

The Delhi University on or about 31.12.2002 relying on or on the basis of the decision of this Court in Magan Mehrotra (supra) issued the following notification :

“In view of the judgment of the Hon'ble Supreme Court of India dated 17.12.2002 in Writ Petition (C) No.417 of 2002. It is hereby notified that for admission of P.G. Courses during the Academic Session 2003, only Delhi University Medical Graduates would be eligible against the 75% reserved seats of the students from Delhi who have taken admission in the University/States under the 15% All-India quota will not be eligible to seek admission in the P.G. Degree/Diploma Courses of Delhi University against the 75% Reserve Seats. All concern may please be note.

Accordingly the students who have done MBBS under 15% All-India quota from the University/States other than Delhi University and have applied for admission to the P.G. Degree/Diploma Courses are not eligible to appear in P.G. Medical Entrance Test 2003 to be held on 9.2.2003. They are advised to apply for the return of the Bank Draft/Cheque.”

The appellants claiming themselves to be "the residents of Delhi" and "sons of the soil" filed the writ petition in the court questioning the aforementioned notification dated 31.12.2002 as also reservation made by way of institutional preference for admission to Post Graduate Medical Courses.

A Division Bench of this Court having regard to the decision in Magan Mehrotra's case (supra) which was rendered by a three-Judge Bench of this Court, referred the matter to a Bench of three Judges by order dated 3.2.2003. However, when the matter was placed before a three-Judge Bench, it by an order dated 7.2.2003 directed the matter to be placed before a Bench of five Judges considering the importance of the matter; but no reason was assigned therefor.

The question which was initially raised in the writ petition was as to whether reservation made by way of institutional preference is ultra vires Articles 14 and 15 of the Constitution of India; but during hearing a larger issue viz. as to whether any reservation, be on residence or institutional preference is constitutionally permissible; was raised at the Bar.

In view of the importance of the question involved, this Bench in terms of order dated 1.4.2003 directed issuance of notice to all the States and Union Territories. Pursuant whereunto, except State of A.P. and State of Jammu & Kashmir all the States filed their returns and were heard.

Shri Harish Salve, learned senior counsel appearing on behalf of the appellants raised two contentions in support of the writ petition. He submitted that in view of the equality clause contained in Articles 14 and 15(1) of the Constitution of India, reservation whether based on domicile or institutional preference would be unconstitutional. The learned counsel took us through the decisions of this Court operating in the field and urged that in view of the passage of time no reservation should be permitted either on the basis of residence or on institutional preference. Reservation on residential criteria, the learned counsel contended, is squarely hit by clause (1) of Article 15 of the Constitution of India. Placing reliance on the debates on the subject at the time of framing of the Constitution, Shri Salve urged that the 'place of birth' being synonymous with 'domicile' the observations made contrary thereto in D.P. Joshi vs. The State of Madhya Bharat and Another [(1955) 1 SCR 1215] are not correct.

Shri Salve further contended that in terms of the constitutional scheme, reservation is permissible only when there exist compelling Government objectives therefor and that too on nominal basis if it can be demonstrated that 'rule of merit' should not be allowed to be sustained and when the class in whose favour a departure is sought to be made constitutes a homogeneous group and such departure satisfies the tests of social justice for securing equality upon comparison of such disability suffered by such class or group of persons. The learned counsel submitted that in the matter of reservation the State must scrupulously follow the requirements of clause (4) of Article 15 of the Constitution of India, namely, that the same is needed for the weaker section of society or a homogeneous class and identified by a presidential order issued in that behalf.

In a case involving higher education even, Shri Salve argued, such a provision must be handled with care and keeping in view a large number of decisions of this Court including M.R. Balaji and Others vs. State of Mysore [AIR 1963 SC 649 = 1963 Supp. (1) SCR 439] not more than 50% of the total seats can be reserved. The learned counsel would contend that if such reservation is prima facie impermissible having regard to the constitutional scheme the same would fall within the purview of 'suspected classification'

and, thus, must pass the 'strict scrutiny test' or 'intermediate scrutiny test'. Any executive order providing for such reservation, the learned counsel urged, must be construed having regard to the preamble, the fundamental rights of the citizens and in particular Article 19 (1)(d), as also the Directive Principles of the State Policy as contained in Part IV of the Constitution of India and in particular Articles 41 and 47 of the Constitution of India. It was argued that meritorious students suffer from lack of mobility as contra distinguished from the mobility of the employees, and are required to be protected so as to suffer any discrimination only on a specious plea of the State "our money, our people". Domicile of all the citizens of India, Shri Salve urged, should be one; as the concept of State domicile has no role to play in our constitutional scheme. He emphasized that keeping the same in view, a profile check is required to be made so far as meritorious students are concerned, as those who are born and brought up in small towns also would like to have higher education in the metropolitan towns where having regard to the better infrastructures and higher resources, the institution therein would provide a better academic pursuit for them. In terms of Article 14 of the Constitution of India, Shri Salve argued, students cannot form different class nor any such classification made amongst them would be in public interest. Relying heavily upon the observations made in

paragraph 10 of the judgment of this Court in Dr. Pradeep Jain's case (supra), the learned counsel submitted that as all students are entitled to equal opportunities all sorts of reservations must be given a go bye.

The learned counsel next contended that in any event, the students like the appellants should not be held to have lost their residential status only because they had gone out of their State of origin for pursuing their MBBS Course for a period of five years.

According to Shri Salve, Magan Mehrotra (supra), does not lay down the correct law and it is required to be overruled.

Assailing reservation by way of institutional preference, Shri Salve, further submitted that the very premise upon which it is based is fallacious inasmuch as the majority of students, in view of the decision of this Court in Dr. Pradeep Jain's case (supra) having taken admission on the criteria of domicile alone, would again be considered for pursuing their Post Graduate Studies only on that basis and, thus, reservation by way of institutional preference would amount to indirect way of doing things as the same would for all intent and purport would be based on domicile and, thus, is liable to be struck down.

Shri Salve further contended that Delhi University or the States were required to place before this Court sufficient materials to prove that such classification on institutional preference is based on an intelligible differential. Drawing our attention to the statements made in the counter affidavit, the learned counsel urged that no such material has been placed except that the said practice is in vogue for a long time.

Shri R.F.Nariman, learned senior counsel appearing on behalf of some of the students of All India Institute of Medical Sciences (AIIMS) submitted that in view of the decision of this Court in All India Institute of Medical Sciences Students' Union vs. All India Institute of Medical Sciences and Others [(2002) 1 SCC 428], out of 40 students only 6 were offered admission in non-clinical subjects which the most of the students would not like to pursue. Shri Nariman urged that plight of the students of AIIMS should be considered having regard to the stand taken by or the practice prevalent in other Universities, namely, institutional preference and in that view of the matter the students of the institution are also entitled to equal opportunity to compete with the students of other Universities.

Shri Shanti Bhushan, learned senior counsel appearing on behalf of the students of Delhi University, on the other hand, submitted that Magan

Mehrotra's case (supra) has correctly been decided. The learned counsel contended that keeping in view the decisions of this Court e.g. D.P. Joshi (supra), Dr. Jagadish Saran & Others vs. Union of India [(1980) 2 SCC 768] and Pradeep Jain (supra), it must be held that reservation by way of institutional preference has held the field for a long time. The impugned notification, Shri Shanti Bhushan urged, having been issued pursuant to the directions of this Court, it is futile to urge that the action on the part of Delhi University in following the same has resulted in arbitrariness. According to the learned counsel reservation by way of institutional preference is not only a matter of convenience but also forms part of the educational policy. If such a policy is not allowed to have a little play, a student while undergoing different courses of studies may have to take admissions in different parts of the country wherefor he would face problems involving different languages, different cultures and different environments. It may not be feasible even for the parents of middle class family to send their children out of the State. Furthermore, the learned counsel contended that the chances that the local students would serve the local people cannot be completely ruled out and, thus, such a criteria cannot be said to be illogical or bad in law.



As regard application of strict scrutiny test, Shri Shanti Bhushan relying on or on the basis of the decision in Shri Ram Krishna Dalmia vs. Justice S.R. Tendolkar and Others [1959 SCR 279] submitted that this Court has laid down the law that the constitutionality of a statute must be presumed and onus to prove that the statute is unconstitutional is upon the person who asserts the same. Only two tests, namely, as to whether the classification is reasonable and based on an intelligible differentia stood the test of time and there is no reason to deviate therefrom. Shri Shanti Bhushan argued that reservation by way of institutional preference had been holding the field since this Court decided Dr. Pradeep Jain's case (*supra*) and nothing has been pointed out by the petitioners to show that the said principle should be departed from.

Shri A. Mariarputham, learned counsel appearing on behalf of Delhi University, supplementing the arguments of Shri Shanti Bhushan, submitted that reservation by way of institutional preference is a definite and identifiable criteria and in that view of the matter it satisfies the test of valid classification as contained in Article 14 of the Constitution of India. The reasons assigned in support of the institutional preference in various decisions of this Court are still relevant and as such there being no change in the situation, any fresh look or reconsideration thereof is not warranted.

This Court, the learned counsel urged that having framed a scheme in Dr. Pradeep Jain's case (supra) which is binding on all concerned in view of the provisions contained in Articles 141, 142, 143 and 144 of the Constitution of India, may not depart therefrom in view of the fact that this Court in Magan Mehrotra's case (supra) upon issuance of notice to all States had clearly directed that the law relating to institutional preference laid down in Dr. Pradeep Jain's case (supra) should be followed and in particular directed that the States of Assam, Karnataka, Tamil Nadu and Goa to follow reservation by way of institutional preference alone.

The learned counsel contended that all the States have since amended their rules so as to consider the candidature of those students who had studied in any of the institutions situated in that State on 15% all India quota and in that view of the matter the said students do not require a further indulgence. According to the learned counsel apart from the fact that the students who had gone to pursue their MBBS courses outside the State are entitled to take part in all India open competition, they having regard to the amendments made in the rules framed by the States of Karnataka, Assam and others being entitled to institutional preference in the State where they had studied, may not be held to be entitled to a further indulgence of competing with the students of Delhi University in 75% quota on the

ground that they are residents of Delhi and thereby bringing back the concept of reservation on domicile indirectly again.

Shri Sanjay Hegde, learned counsel appearing on behalf of the State of Karnataka, Shri A. Phukan, learned counsel appearing for the State of Assam and Shri R.S. Suri, learned counsel appearing for the State of Punjab, however, submitted that the States should be allowed to set apart some seats for the local candidates. It was pointed out that unlike other studies Post Graduate Medical Courses involve practical training and the students are required to work in the hospitals wherein they are paid stipends by the States. It was urged that the States have been finding it *extremely* difficult to get good number of local doctors to serve the rural population and, thus, such a criteria, according to the learned counsel, cannot be said to be unconstitutional.

Before we embark upon the questions raised at the Bar, we may notice that the States before the decision of this Court in Dr. Parag Gupta's case (supra) had been following different criteria as regard grant of preference i.e. either on institution basis or on residence basis or both. The positions prevailing in different States before and after Dr. Parag Gupta's case (supra) and at present are given as under :

POSITION BEFORE PARAG GUPTA

Sl.	State	Nature of Preference	
1.	U.P.	Institutional	
2.	Delhi	Institutional	
3.	Maharashtra	Institutional	
4.	Gujarat	Institutional	
5.	West Bengal	Institutional	
6.	Assam		
7.	Tamil Nadu		Residence
8.	Goa		Residence
9.	Karnataka		Residence
10.	Madhya Pradesh		Residence
11.	Haryana	Institutional OR	Residence
12.	Punjab	Institutional OR	Residence
13.	Rajasthan	Institutional OR	Residence
14.	Kerala	Institutional OR	Residence
15.	Orissa	Institutional OR	Residence
16.	Himachal Pradesh	Institutional OR	Residence
17.	Bihar	Institutional OR	Residence
18.	Pondicherry	25% all India quota + 37.5% Institutional of available seats + 37.5% of available seats open for all	

POSITION AFTER PARAG GUPTA

Sl.	State	Nature of Preference	
1.	U.P.	Institutional	Residence (15%)
2.	Delhi	Institutional	Residence (15%)

3.	Maharashtra	Institutional	
4.	Gujarat	Institutional	
5.	West Bengal	Institutional	
6.	Assam		Residence
7.	Tamil Nadu		Residence
8.	Goa		Residence (10 years)
9.	Karnataka		Residence
10.	Madhya Pradesh	Institutional OR Residence	
11.	Haryana	Institutional OR Residence	
12.	Punjab	Institutional OR Residence	
13.	Rajasthan	Institutional OR Residence	
14.	Kerala	Institutional OR Residence	
15.	Orissa	Institutional OR Residence	
16.	Himachal Pradesh	Institutional OR Residence	
17.	Bihar	Institutional OR Residence	
18.	Pondicherry	25% all India quota + 37.5% Institutional of available seats + 37.5% of available seats open for all	

### PRESENT POSITION

Sl.	State	Nature of Preference	
1.	U.P.	Institutional	
2.	Delhi	Institutional	
3.	Maharashtra	Institutional	
4.	Gujarat	Institutional	
5.	West Bengal	Institutional	
6.	Assam		Residence
7.	Tamil Nadu		Residence
8.	Goa		Residence (10 years)
9.	Karnataka		Residence (10 years)
10.	Madhya Pradesh	Institutional OR Residence	
11.	Haryana	Institutional OR Residence	
12.	Punjab	Residence	
13.	Rajasthan	Institutional OR Residence	
14.	Kerala	Institutional OR Residence	

15.	Orissa	Institutional OR Residence
16.	Himachal Pradesh	Institutional OR Residence
17.	Bihar	Institutional OR Residence
18.	Pondicherry	25% all India quota + 37.5% Institutional of available seats + 37.5% of available seats open for all

It is neither in doubt nor in dispute that before the scheme was evolved in Dr. Pradeep Jain's case (supra), notices had been issued to all the States and all of them were fully heard. But despite the same, the orders passed by this Court in Dr. Pradeep Jain's case (supra) had been flouted with impunity, inter alia, by the States of Assam, Karnataka, Goa and Tamil Nadu. Now it transpires that even the State of Punjab has also not been following the said decision.

The necessity of issuing notices by this Court again in Magan Mehrotra's case (supra) must be considered from that angle. In Magan Mehrotra's case (supra), this Court not only reiterated that the reservation by way of institutional preference be maintained but also directed the aforementioned States to follow the same.

The questions must, therefore, be considered in the aforementioned factual backdrop.

The first question that arises for consideration is, **whether the reservation on the basis of domicile is impermissible in terms of clause (1) of Article 15 of the Constitution of India ?** The term 'place of birth' occurs in clause (1) of Article 15 but not 'domicile'. If a comparison is made between Article 15(1) and Article 16(2) of the Constitution of India, it would appear that whereas the former refers to 'place of birth' alone, the latter refers to both 'domicile' and 'residence' apart from place of birth. A distinction, therefore, has been made by the makers of the Constitution themselves to the effect that the expression 'place of birth' is not synonymous to the expression "domicile" and they reflect two different concepts. It may be true, as has been pointed out by Shri Salve and pursued by Mr. Nariman, that both the expressions appeared to be synonymous to some of the members of the Constituent Assembly but the same, in our opinion, cannot be a guiding factor. In D.P. Joshi's case (supra), a Constitution Bench held so in no uncertain terms.

This Bench is bound by the said decision.

In State of Uttar Pradesh and Others vs. Pradip Tandon and Others [(1975) 1 SCC 267], this Court observed :

"The reservation for rural areas cannot be sustained on the ground that the rural areas represent socially and educationally backward classes of citizens. This reservation appears to be made for the majority population of the State. Eighty per cent of the population of the State cannot be a homogeneous class. Poverty in rural areas cannot be the basis of classification to support reservation for rural areas. Poverty is found in all parts of India. In the instructions for reservation of seats it is provided that in the application form a candidate for reserved seats from rural areas must submit a certificate of the District Magistrate of the District to which he belonged that he was born in rural areas and had a permanent home there, and is residing there or that he was born in India and his parents and guardians are still living there and earn their livelihood there. The incident of birth in rural areas is made the basic qualification. No reservation can be made on the basis of place of birth, as this would offend Article 15."

Answer to the said question must, therefore, be rendered in the negative.

The second question that arises for our consideration is, whether reservation by way of institutional preference comes within suspected classification warranting strict scrutiny test ?

Once it is held that clause (1) of Article 15 of the Constitution of India is not attracted, the only question which survives is as to whether the same



attracts the wrath of Article 14 of the Constitution of India. Article 14 forbids class legislation but permits reasonable classification subject to the conditions that it is based on an intelligible differentia and that the differentia must have a rational relation to the object sought to be achieved.

In Shri Ram Krishna Dalmia's case (supra), this Court categorically held :

"...It is now well established that while article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an 'intelligible differentia' which distinguishes persons or things that are grouped together from others left out of the group and, (ii) that that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases, namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. It is also well established by the decisions of this Court that article 14 condemns discrimination not only by a substantive law but also by a law of procedure."

The principle enunciated above has been consistently adopted and applied in subsequent cases. The decisions of this Court further establish

- (a) that a law may be constitutional even though it relates to a single individual if, on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself;
- (b) that there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles;
- (c) that it must be presumed that the legislature understands and correctly appreciates the need of ~~the vast people, that its laws are directed at~~ problems made manifest by experience and that its discriminations are based on adequate grounds;
- (d) that the legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest;
- (e) that in order to sustain the presumption of constitutionality the court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation; and
- (f) that while good faith and knowledge of the existing conditions on the part of a legislature are to be presumed, if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or

corporations to hostile or discriminating legislation.

The above principles will have to be constantly borne in mind by the court when it is called upon to adjudge the constitutionality of any particular law attacked as discriminatory and violative of the equal protection of the laws.”

The strict scrutiny test or the intermediate scrutiny test applicable in the United States of America as argued by Shri Salve cannot be applied in this case. Such a test is not applied in Indian Courts. In any event, such a test may be applied in a case where a legislation ex facie is found to be unreasonable. Such a test may also be applied in a case where by reason of a statute the life and liberty of a citizen is put in jeopardy. This Court since its inception apart from a few cases where the legislation was found to be ex facie wholly unreasonable proceeded on the doctrine that constitutionality of a statute is to be presumed and the burden to prove contra is on him who asserts the same. The courts always lean against a construction which reduces the statute to a futility. A statute or any enacting provision therein must be so construed as to make it effective and operative “on the principle expressed in the maxim : *ut res magis valeat quam pereat*”. [See CIT vs. Teja Singh [AIR 1959 SC 352] and Tinsukhia Electric Supply Co. Ltd. vs. State of Assam [AIR 1990 SC 123].

Applying the test of presumption of constitutionality no case has been made out for invoking the doctrine of strict construction or intermediate construction.

The third question that arises for our consideration is, **whether the reservation by institutional preference is valid?** India is one country and all its citizens should equally be treated. The essence of equality is enshrined in Article 14 of the Constitution of India. But does it mean that equality clause must be applied to all citizens to all situations? It is true that the country should strive to achieve a goal of excellence which in turn would mean that meritorious students should not be denied pursuit of higher studies. This itself brings us the question, who is to judge the merit and what are the standards therefor? It is extremely difficult to lay down a fool-proof criteria. Success or failure of a candidate in one examination or the other may not lead to infallible conclusion as regard the merit of a candidate so as to achieve excellence. The larger question, therefore, would be how to and to what extent balance should be struck..

Ideal situation, although it might have been to see that only meritorious students irrespective of caste, creed, sex, place of birth,

domicile/residence are treated equally but history is replete with situations to show that India is not ready therefor. Sociological condition prevailing in India compelled the makers of the Constitution to bring in Articles 15 and 16 in the Constitution. The said Articles for all intent and purport are species of Article 14 which is the genius in a sense that they provide for exception to the equality clause also. Preference to a class of persons whether based on caste, creed, religion, place of birth, domicile or residence is embedded in our constitutional scheme. Whereas larger interest of the country must be perceived, the law makers cannot shut their eyes to the local needs also. Such local needs must receive due consideration keeping in view the duties of the State contained in Articles 41 and 47 of the Constitution of India.

(Emphasis mine)

For the last five decades this Court times without number had adopted the efficacy of one criteria or the other for giving preference to a section of students.

Constitutional interpretation is a difficult task. Its concept varies from statute to statute, fact to fact, situation to situation and subject matter to subject matter. Perceptions are yet to be perceived by the court which would meet all situations while laying down emphasis for achieving excellence in

all spheres of life keeping in view Chapter IV-A of the Constitution of India which provide for fundamental duties, circumstances and compulsions faced by the State in this behalf led the courts to uphold a statute providing for reservation for a special class of people. Mostly they suffer from disability either being belonging to an oppressed community or by way of economical, cultural or social imbalances. The courts shall all along strive hard for maintaining a balance. While interpreting the Constitution, we must notice the following view of Justice Holmes expressed in Missouri vs. Holland [252 US 416 (433)] :

“When we are dealing with words that also are a constituent act, like the Constitution of the United States, we must realise that they have called into life a being the development of which could not have been foreseen completely by the most gifted of its begetters. It was enough for them to realise or to hope that they had created an organism, it has taken a century and has cost their successors must sweat and blood to prove that they created a nation. The case before us must be considered in the light of our whole experience and not merely in that of what was said a hundred years ago.”

[Emphasis supplied]

Equally important is an elucidation of Justice Frankfurter contained in an article “Some Reflections on the Reading of Statutes”. This Court also in

Jagadish Saran and Others vs. Union of India [(1980) 2 SCC 768], a decision which is applicable in the fact situation of this case, stated the law thus :

“Law, constitutional law, is not an omnipotent abstraction or distant idealization but a principled, yet pragmatic, value-laden and resulted-oriented, set of propositions applicable to and conditioned by a concrete stage of social development of the nation and aspirational imperatives of the people. India Today – that is the inarticulate major premise of our constitutional law and life.”

In D.P. Joshi's case (supra) advantage given to local residents as regard payment of capitation fee was upheld. A Constitution Bench of this Court in Km. Chitra Ghosh and Another vs. Union of India and Others [(1969) 2 SCC 228] stated the law thus :

“It is the Central Government which bears the financial burden of running the medical college. It is for it to lay down the criteria for eligibility. From the very nature of things it is not possible to throw the admission open to students from all over the country. The Government cannot be denied the right to decide from what sources the admission will be made. That essentially is a question of policy and depends inter alia on an overall assessment and survey of the requirements of residents of particular territories and other categories of persons for whom it is necessary to provide facilities for medical education. If the sources are properly classified whether on territorial, geographical or other reasonable basis it

is not for the courts to interfere with the manner and method of making the classification.”

[Emphasis supplied]

The matter came up for consideration again in D. N. Chanchala vs. The State of Mysore and Others [(1971) 2 SCC 293], M.R. Mini (Minor) represented by her Guardian and Father M.P. Rajappan vs. State of Kerala and Another [(1980) 2 SCC 216], wherein a similar note was struck.

In Dr. Jagadish Saran's case (supra) this Court had an occasion to consider the question as to whether grant of institutional preference was a valid basis for admission. This case dealt with admission in Post Graduate Courses of the Delhi University. Krishna Iyer, J. with whom Pathak, J. concurred in no uncertain terms upheld such preference.

A large number of decisions on the point were taken into consideration by this Court in Dr. Pradeep Jain's case (supra). Upon a detailed analysis of the constitutional provisions, case laws as also the practical difficulties faced by the States, students as also the institutions, it was held :



"...What is, therefore, necessary is to set up proper and adequate structures in rural areas where competent medical services can be provided by doctors and some motivation must be provided to the doctors servicing those areas. But, as the position stands today, there is considerable paucity of seats in medical colleges to satisfy the increasing demand of students for admission and some principle has, therefore, to be evolved for making selection of students for admission to the medical colleges and such principle has to be in conformity with the requirement of Article 14. Now, the primary imperative of Article 14 is equal opportunity for all across the nation for education and advancement and, as pointed out by Krishna Iyer, J. in *Jagdish Saran vs. Union of India* "this has burning relevance to our times when the country is gradually being 'broken up into fragments by narrow domestic walls' by surrender to narrow parochial loyalties". What is fundamental, as an enduring value of our polity, is guarantee to each of equal opportunity to unfold the full potential of his personality. Anyone anywhere, humble or high agrestic or urban, man or woman, whatever be his language or religion, place of birth or residence, is entitled to be afforded equal chance for admission to any secular educational course for cultural growth, training facility, speciality or employment. It would run counter to the basic principle of equality before the law and equal protection of the law if a citizen by reason of his residence in State A, which ordinarily in the commonality of cases, would be the result of his birth in a place situate within that State, should have opportunity for education or advancement which is denied to another citizen because he happens to be resident in State B. It is axiomatic that talent is not the monopoly of the residents of any particular State; it is more or less evenly distributed and given proper opportunity and environment, everyone has a prospect of rising to

the peak. What is necessary is equality of opportunity and that cannot be made dependent upon where a citizen resides. If every citizen is afforded equal opportunity, genetically and environmentally, to develop his potential, he will be able in his own way to manifest his faculties fully leading to all round improvement in excellence. The philosophy and pragmatism of universal excellence through equality of opportunity for education and advancement across the nation is part of our founding faith and constitutional creed. The effort must, therefore, always be to select the best and most meritorious students for admission to technical institutions and medical colleges by providing equal opportunity to all citizens in the country and no citizen can legitimately, without serious detriment to the unity and integrity of the nation, be regarded as an outsider in our constitutional set-up. Moreover, it would be against national interest to admit in medical colleges or other institutions giving instruction in specialities, less meritorious students when more meritorious students are available, simply because the former are permanent residents or residents for a certain number of years in the State while the latter are not, though both categories are citizens of India. Exclusion of more meritorious students on the ground that they are not resident within the State would be likely to promote substandard candidates and bring about fall in medical competence, injurious in the long run to the very region. "It is no blessing to inflict quacks and medical midgets on people by wholesale sacrifice of talent at the threshold. Nor can the very best be rejected from admission because that will be a national loss and the interests of no region can be higher than those of the nation." The primary consideration in selection of candidates for admission to the medical colleges must, therefore, be merit. The object of any rules which may be made for regulating admissions to the medical

colleges must be to secure the best and most meritorious students."

But it was observed :

- "...Whether consistently with the constitutional values, admissions to a medical college or any other institution of higher learning situate in a State can be confined to those who have their 'domicile' within the State or who are residents within the State for a specified number of years or can any reservation in admission be made for them so as to give them precedence over those who do not possess 'domicile' or residential qualification within the State, irrespective of merit..."

The right of development in a developing country is acknowledged in International Treaties, Charters and Conventions.

Referring to the State mentality and pointing out to the law that there does not exist any separate State domicile in India, this Court specifically banished the residential requirement for the purpose of admission into Post Graduate Medical Courses for all times. It directed :

"So much for admission to the MBBS course, but different consideration must prevail when we come to consider the question of reservation based on residence requirement within the State or on institutional preference for admission to the post-graduate courses, such as, MD, MS and the like. There we cannot allow

excellence to be compromised by any other considerations because that would be detrimental to the interest of the nation. It was rightly pointed out by Krishna Iyer, J. in Jagdish Saran case, and we wholly endorse what he has said :

- The basic medical needs of a region or the preferential push justified for a handicapped group cannot prevail in the same measure at the highest scales of speciality where the best skill or talent, must be handpicked by selecting according to capability. At the level of PhD, MD, or levels of higher proficiency, where intentional measure of talent is made, where losing one great scientist or technologist in the making is a national loss, the considerations we have expanded upon as important lose their potency. Here equality, measured by matching excellence, has more meaning and cannot be diluted much without grave risk. [SCC pp. 778-79, para 23]

\* \* \*

If equality of opportunity for every person in the country is the constitutional guarantee, a candidate who gets more marks than another is entitled to preference for admission. Merit must be the test when choosing the best, according to this rule of equal chance for equal marks. This proposition has greater importance when we reach the higher levels of education like post-graduate courses. After all, top technological expertise in any vital field like medicine is a nation's human asset without which its advance and development will be stunted. The role of high grade skill or special talent may be less at the lesser levels of education, jobs and disciplines of social inconsequence, but more at the higher levels of sophisticated skills and strategic employment. To

devalue merit at the summit is to temporise with the country's development in the vital areas of professional expertise. In science and technology and other specialised fields of developmental significance, to relax lazily or easily in regard to exacting standards of performance may be running a grave national risk because in advanced medicine and other critical departments of higher knowledge, crucial to material progress, the people of India should not be denied the best the nation's talent lying latent can produce. If the best potential in these fields is cold-shouldered for populist considerations garbed as reservations, the victims, in the long run, may be the people themselves. Of course, this unrelenting strictness in selecting the best may not be so imperative at other levels where a broad measure of efficiency may be good enough and what is needed is merely to weed out the worthless. (SCC p. 785, para 39)

\* \* \*

Secondly, and more importantly, it is difficult to denounce or renounce the merit criterion when the selection is for postgraduate or post-doctoral courses in specialised subjects. There is no substitute for sheer flair, for creative talent, for fine-tuned performance at the difficult heights of some disciplines where the best alone is likely to blossom as the best. To sympathise mawkishly with the weaker sections by selecting sub-standard candidates, is to punish society as a whole by denying the prospect of excellence say in hospital service. Even the poorest, when stricken by critical illness, needs the attention of super-skilled specialists, not humdrum second-rates. So it is that relaxation on merit, by overruling equality and quality altogether, is a social risk where the stage

is post-graduate or post- doctoral. [SCC p. 786, para 44]

These passages from the judgment of Krishna Iyer, J. clearly and forcibly express the same view which we have independently reached on our own and indeed that view has been so ably expressed in these passages that we do not think we can usefully add anything to what has already been said there. We may point out that the Indian Medical Council has also emphasized that playing with merit, so far as admissions to post-graduate courses are concerned, for pampering local feeling, will boomerang. We may with advantage reproduce the recommendation of the Indian medical Council on this point which may not be the last word in social wisdom but is certainly worthy of consideration :

Students for post-graduate training should be selected strictly on merit judged on the basis of academic record in the under graduate course. All selection for post-graduate studies should be conducted by the Universities.

The Medical Education Review Committee has also expressed the opinion that "all admissions to the post-graduate courses in any institution should be open to candidates on an all-India basis and there should be no restriction regarding domicile in the State/Union Territory in which the institution is located". So also in the policy statement filed by the learned Attorney-General, the Government of India has categorically expressed the view that :

So far as admission to the institutions of post-graduate colleges and special professional colleges is concerned, it should be entirely on the basis of all-India merit subject to constitutional

reservations in favour of Scheduled Castes and Scheduled Tribes.

We are therefore of the view that so far as admissions to post-graduate courses, such as MS, MD and the like are concerned, it would be eminently desirable not to provide for any reservation based on residence requirement within the State or on institutional preference. But, having regard to broader considerations of equality of opportunity and institutional continuity in education which has its own importance and value, we would direct that though residence requirement within the State shall not be a ground for reservation in admissions to post-graduate courses, a certain percentage of seats may in the present circumstances, be reserved on the basis of institutional preference in the sense that a student who has passed MBBS course from a medical college or university, may be given preference for admission to the post-graduate course in the same medical college or university but such reservation on the basis of institutional preference should not in any event exceed 50 per cent of the total number of open seats available for admission to the post-graduate course. This outer limit which we are fixing will also be subject to revision on the lower side by the Indian Medical Council in the same manner as directed by us in the case of admission to the MBBS course. But, even in regard to admissions to the post-graduate course, we would direct that so far as super specialities such as neuro-surgery and cardiology are concerned, there should be no reservation at all even on the basis of institutional preference and admissions should be granted purely on merit on all-India basis."

It in no uncertain terms directed :

"The decisions reached by us in these writ petitions will bind the Union of India, the State Governments and Administrations of Union Territories because it lays down the law for the entire country and moreover we have reached this decision after giving notice to the Union of India and all the State Governments and Union Territories...."

A scheme, thus, came to be framed by this Court which is a law within the meaning of Article 141 of the Constitution of India and is binding on all the States in terms of Article 144 of the Constitution of India. The principal considerations which weighed with the court for arriving at the aforementioned conclusion were :

"...There can be no doubt that the policy of ensuring admissions to the MBBS Course on all-India basis is a highly desirable policy, based as it is on the postulate that India is one nation and every citizen of India is entitled to have equal opportunity for education and advancement, but it is an ideal to be aimed at and it may not be realistically possible, in the present circumstances, to adopt it, for it cannot produce real equality of opportunity unless there is complete absence of disparities and inequalities - a situation which simply does not exist in the country today. There are massive social and economic disparities and inequalities not only between State and State but also between region and region within a State and even between citizens and citizens within the same region. There is a yawning gap between the rich and the poor and there are so many disabilities and



injustices from which the poor suffer as a class that they cannot avail themselves of any opportunities which may in law be open to them. They do not have the social and material resources to take advantage of these opportunities which remain merely on paper recognized by law but non-existent in fact. Students from backward States or regions will hardly be able to compete with those from advanced States or regions because, though possessing an intelligent mind, they would have had no adequate opportunities for development so as to be in a position to compete with others. So also students belonging to the weaker sections who have not, by reason of their socially or economically disadvantaged position, been able to secure education in good schools would be at a disadvantage compared to students belonging to the affluent or well-to-do families who have had the best of school education and in open all-India competition, they would be likely to be worsted..."

A distinction was made therefor between the Undergraduate Course i.e. MBBS Course and Post Graduate Medical Course as also super speciality courses. The Court, therefore, sought to strike a balance of rights and interests of all concerned.

However, the percentage of seats to be allotted on all-India basis, however, came to be modified in Dr. Dinesh Kumar and Others vs. Motilal Nehru Medical College, Allahabad and Others [(1985) 3 SCC 22] in the following terms :-

"We would also like to clear up one misunderstanding which seems to prevail with some State Governments and universities in regard to the true import of our Judgment dated June 22, 1984. They have misinterpreted our Judgment to mean that 30% of the total number of seats available for admission to MBBS course in a medical college should be kept free from reservation on the basis of residence requirement or institutional preference. That is a total misreading of our Judgment. What we have said in our Judgment is that after providing for reservation validly made, whatever seats remain available for non-reserved categories, 30% of such seats at the least, should be left free for open competition and admission to such 30% open seats should not be based on residence requirement or institutional preference but students from all over the country should be able to compete for admissions to such 30% open seats. To take an example, suppose there are 100 seats in a medical college or university and 30% of the seats are validly reserved for candidates belonging to Scheduled Castes and Scheduled Tribes. That would leave 70 seats available for others belonging to non-reserved categories. According to our Judgment, 30% of 70 seats, that is, 21 seats out of 70 and not 30% of the total number of 100 seats, namely, 30 seats, must be filled up by open competition regardless of residence requirement or institutional preference."

Changes were made in the formula in Dr. Dinesh Kumar and Others [(11) vs. Motilal Nehru Medical College, Allahabad and Others] [(1986) 3 SCC 727 at page 733]. This Court thereafter times without number issued directions from time to time regulating admissions in different courses of

studies, meticulous supervisions and conduct of examinations by the Universities as also all-India tests in the following :

1. Dr. Dinesh Kumar (III) - [(1987) 4 SCC 122]
2. Dr. Dinesh Kumar (IV) - [(1987) 4 SCC 459]
3. Dr. Dinesh Kumar (V) - [(1989) Supp. 2 SCC 428]
4. Dr. Dinesh Kumar (VI) - [(1987) 1 SCALE 1232]
5. Dr. Dinesh Kumar (VII) - [(1987) 2 SCALE 222]
6. Dr. Dinesh Kumar (VIII) - [(1988) 1 SCALE 428]
7. Dr. Dinesh Kumar (IX) - [(1990) 4 SCC 627]

The State of Assam, it appears, was specifically directed to follow institutional preference by this Court by an order dated 2.2.1996 in Writ Petition (Civil) No. 625 of 1995.

A deviation to the said dicta, however, was sought to be made by a two-Judge Bench of this Court in Dr. Parag Gupta's case (supra). In the said decision some of the students complained that whereas the students who had undergone studies in other Universities were entitled to reservation by way of domicile or institutional preference, but they, although had successfully completed in All India Entrance Test in MBBS Course, are not being permitted to compete with their fellow students of Delhi University on the

ground of institutional preference, although they belong to the same class of students.

This Court in Dr. Parag Gupta (supra) did not lay down any law. It dealt with the situation on equitable and humanitarian grounds but while doing so it indisputably deviated from the law laid down in Dr. Pradeep Jain's case (supra) only by way of an interim arrangement. It inadvertently created reservation on domicile which was forbidden in Dr. Pradeep Jain's case (supra). The said provisional directions being binding on Delhi University came to be followed in subsequent years. The sympathetic consideration shown by this Court in Dr. Parag Gupta's case (supra) came to be misapplied by the Allahabad High Court in Vineet Singh's case wherein the High Court directed consideration of cases of the students who belonged to the State of U.P. irrespective of the fact that whether they had gone out of their home State on 15% all-India quota or not. This Court in State of U.P. and Others vs. Vineet Singh and Others [(2000) 7 SCC 262] clarified the position holding that the High Court was wrong in extending the benefit in Dr. Parag Gupta's case (supra) to other students and reiterated that Dr. Parag Gupta's decision was confined to the students who had gone to other States under 15% all-India quota. The ratio of the judgment in Dr. Parag Gupta's

case (supra) came to be reiterated in Abhinav Aggarwal and Another vs. Union of India and Others [(2001) 3 SCC 425].

In Dr. Prachi Almeida vs. Dean, Goa Medical College and Others [((2001) 7 SCC 640)], a problem was faced by a student from Delhi who was admitted into Goa Medical College under the 15% all-India quota. She was denied admission in Goa on the ground that she was not resident of the said State. She, however, was married in Goa. This Court followed Dr. Pradeep Jain's case (supra) and directed that the student cannot be denied admission on the basis of residence requirement holding that if the candidate has done MBBS Course in that State such a candidate would be eligible for admission in Post Graduate Medical Course therein

Some students of the Delhi University, thereafter filed a writ petition questioning the residential reservation in Magan Mehrotra and Others vs. Union of India & Others since reported in (2003) 3 SCALE 101. A Bench of this Court therein by an order dated 11.09.2002 noticing the conflict between the decisions in Dr. Pradeep Jain (supra) on the one hand and Dr. Parag Gupta (supra) on the other, issued notices to all the States excepting the States of Jammu & Kashmir and Andhra Pradesh and referred the matter to a three-Judge Bench. In Magan Mehrotra (supra), this Court held that the

decision in Dr. Parag Gupta (supra) is contrary to the decision in Dr. Pradeep Jain (supra) stating :

“...A bare look at the judgment of the 3-Judge Bench in Pradeep Jain’s case and two-Judge Bench in Parag Gupta’s case in relation to the question of preference in the post graduate course it cannot but be held that the Parag Gupta’s case took a different view by upholding the residential preference, in essence, which was contrary to the judgment of the three-Judge Bench in Pradeep Jain’s case. Independently on examining the 7 issue of preference, we are also of the considered opinion that the decision rendered by this Court in Pradeep Jain’s case had taken a correct criteria into consideration and we therefore, agree with the principles evolved and the ratio given in Pradeep Jain’s case so far as it relates to admission into the post graduate courses and the question of institutional preference to be given to those who had studied their under-graduate courses in the very institutions against the 15% quota on the All India basis. In this view of the matter, the impugned Bulletin of Information issued by the Delhi University in relation to the Post-doctoral (D.M./M.Ch.) Post Graduate Degree must be held to be contrary to the direction of this Court in Pradeep Jain’s case and the same is accordingly quashed. However, this order shall be made effective from the next academic session. We, however, direct the States of Assam, Tamil Nadu, Goa and Karnataka to follow the pattern of institutional preference as has been indicated by this Court in Pradeep Jain’s case and reiterated by us today...”

We may, however, notice that this Court in K. Duraisamy and Another vs. State of Tamil Nadu and Others [(2001) 2 SCC 538] upheld the sources for admission by giving preference to the doctors working in the hospitals in the Post Graduate Courses on the ground that the same constitutes a valid classification.

The discussions on this topic would remain incomplete if we fail to notice a recent decision of this Court in All India Institute of Medical Sciences Students' Union (supra) rendered by one of us, Hon'ble Lahoti, J. wherein this Court, keeping in view the peculiar situation obtaining in the case of AIIMS, held institutional reservation to be unconstitutional. It, however, keeping in view the necessity of giving institutional preference to students who had studied from AIIMS, directed that such preference be given to the extent of 25% of students instead of 33%. However, keeping in view the fact that there were 40 seats in MBBS Course whereas 132 seats in Post Graduate Courses, the institutional preference to be given to the students of AIIMS came to about 82.5%.

In this context it is relevant to examine the relevance of an entry in the State List or Concurrent List.

'Education' appears both in Union List as also in the Concurrent List.

The relevant entries in the Constitution are as under :

"66. List I - Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions."

"25. List III - Education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of List I; vocational and technical training of labour."

An argument has been advanced that different interpretation is needed having regard to the shift of constitutional entry from List II to List III. One of us in T.M.A. Pai Foundation and Others vs. State of Karnataka and Others [(2002 (8) SCC 481)], had to say the following :

"Further, under clause (2) of Article 246 Parliament and subject to clause (1) the legislature of any State are empowered to make law with respect to any of the matters enumerated in List III Seventh Schedule and under clause (3) of Article 246, the legislature of any State is empowered to enact law with respect to any of the matters enumerated in List II in the Seventh Schedule subject to clauses (1) and (2). From the aforesaid provisions it is clear that it is Article 246 and other articles which either empower Parliament or the State Legislature to enact law and not the entries finding place in three lists of the Seventh Schedule. Thus the function of ~~entries in List~~



lists of the Seventh Schedule is to demarcate the area over which the appropriate legislatures can enact laws but do not confer power either on Parliament or the State Legislatures to enact laws. It may be remembered, by transfer of the entries, the character of the entries is not lost or destroyed. In this view of the matter by transfer of contents of Entry 11 of List II to List III as Entry 25 has not denuded the power of the State Legislature to enact law on the subject "Education" but has also conferred power on Parliament to enact law on the subject "Education".

Shifting of the entry from the State List to the Concurrent List is not, thus, relevant inasmuch the State in absence of any Parliamentary act has the legislative competence to enact a statute laying down reservation for entry in any course of studies including the medical courses.

The sole question, therefore, is as to whether reservation by way of institutional preference is ultra vires Article 14 of the Constitution of India. We think not. Article 14, it will bear repetition to state, forbids class legislation but does not forbid reasonable classification, which means - (1) must be based on reasonable and intelligible differentia; and (2) such differentia must be on rational basis.

Hence, we may also notice the argument, whether institutional reservation fulfils the aforementioned criteria or not must be judged on the following :-

1. There is a presumption of constitutionality;
2. The burden of proof is upon the writ petitioners as they have questioned the constitutionality of the provisions;
3. There is a presumption as regard the State's power on extent of its legislative competence;
4. Hardship of few cannot be the basis for determining the validity of any statute.

The court while adjudicating upon the constitutionality of the provisions of the statute may notice all relevant facts whether existing or conceived.

This Court may therefore notice the following :

- (i) The State runs the Universities.
- (ii) It has to spend a lot of money in imparting medical education to the students of the State.

- (iii) Those who get admission in Post Graduate Courses are also required to be paid stipends. Reservation of some seats to a reasonable extent, thus, would not violate the equality clause.
- (iv) The criteria for institutional preference has now come to stay. It has worked out satisfactorily in most of the States for last about two decades.
- (v) Even those States which defied the decision of this Court in Dr. Pradeep Jain's case (supra) had realized the need for institutional preference.
- (vi) No sufficient material has been brought on record for departing from this well-established admission criteria.
- (vii) It goes beyond any cavil of doubt that institutional preference is based on a reasonable and identifiable classification. It may be that while working out the percentage of reservation invariably some local students will have preference having regard to the fact that domicile/residence was one of the criteria for admission in MBBS Course. But together with the local students 15% students who had competed in all India Entrance Examination would also be getting the same benefit. The percentage of students who were to get the benefit of

reservation by way of institutional preference would further down if the decision of this Court in Dr. Pradeep Jain's case (supra) is scrupulously followed.

(viii) Giving of such a preference is a matter of State policy which can be invalidated only in the event of being violative of Article 14 of the Constitution of India.

(ix) The students who would get the benefit of institutional preference being on identifiable ground, there is hardly any scope

(x) for manipulation.

In Km. N. Vasundara vs. State of Mysore and Another [(1971) 1 Supp. SCR 381], it was observed :

"But cases of hardship are likely to arise in the working of almost any rule which may be framed for selecting a limited number of candidates for admission out of a long list. This, however, would not render the rule unconstitutional."

As noticed hereinbefore, in D.N. Chanchala's case (supra), M.R. Mini's case (supra) and Jagadish Saran's case (supra) institutional preference has been preferred. It has been reiterated in the law laid down by way of a scheme evolved in Dr. Pradeep Jain (supra) and reiterated in Magan Mehrotra (supra).

We, therefore, do not find any reason to depart from the ratio laid down by this Court in Dr. Pradeep Jain (supra). The logical corollary of our finding is that reservation by way of institutional preference must be held to be not offending Article 14 of the Constitution of India.

However, the test to uphold the validity of a statute on equality must be judged on the touch-stone of reasonableness. It was noticed in Dr. Pradeep's Jain's case (supra) that reservation to the extent of 50% was held to be reasonable. Although subsequently in Dr. Dinesh Kumar's case (supra) it was reduced to 25% of the total seats. The said percentage of reservation was fixed keeping in view the situation as then existing. The situation has now changed to a great extent. Twenty years have passed. The country has during this time have produced a large number of Post Graduate doctors. Our Constitution is organic in nature. Being a living organ, it is

ongoing and with the passage of time, law must change. Horizons of constitutional law are expanding.

Having regard to the facts and circumstances of the case, we are of the opinion that the original scheme as framed in Dr. Pradeep Jain's case (supra) should be reiterated in preference to Dr. Dinesh Kumar's case (supra). Reservation by way of institutional preference, therefore, should be confined to 50% of the seats since it is in public interest.

For the purpose of selecting the candidates, it is necessary to hold an All India Entrance Examination by an impartial and reputed body. We must, therefore, lay down the criteria therefor. AIIMS in terms of an order passed by this Court has been conducting the said examination. It may continue to do so unless a competent body is created by the Central Government in terms of a Parliamentary Act or otherwise. All expenses for conducting such examination shall be borne by the Central Government which would also provide the requisite infrastructure therefor. One test shall be held for all the students taking admission throughout the country. This order is passed keeping in view the fact that now one common entrance test is held for admission against 25% of all India quota and other tests are being held by the respective Universities. Disparities in such tests should be done away

with and merit of the students should be judged on the basis of one test held therefor.

AIIMS is an institution of excellence. It is a class by itself and pride. We are, therefore, of the opinion that in the AIIMS and the medical colleges of the Central University, merit should have primacy subject of course to institutional preference to the extent of 50% of the total seats in the MBBS Course. In all other respects the decision of this Court in All India Institute of Medical Sciences Students' Union's case (supra) shall operate.

Our directions aforementioned, however, are interim in nature. The Parliament having regard to Entry 66, List I of the Seventh Schedule of the Constitution of India has the legislative competence which would take care of the country as a whole. While making such a legislation, the Parliament undoubtedly would take into consideration the special needs of some small States, having regard to their backwardness economic, social and educational as also geographical conditions.

The Parliament has also the legislative competence in terms of Entry 25, List III of the Seventh Schedule of the Constitution. It for education and particularly higher education where excellence is required, while enacting

law must also foresee that in the era of liberalisation and globalisation, Indian citizens must compete with their counter-parts of the developed countries. Merit, thus, must be allowed to explore to the fullest extent. Genius hidden in the citizens must be allowed to blossom. Despite 55 years of India's existence as an independent nation, a National policy on higher education has not come into being. Its significance and importance was highlighted in Dr. Pradeep Jain's case (supra); but the Parliament did not pay any heed thereto.

The courts are normally reluctant to issue any direction to the Central Government for making law. Following our practice, we refrain ourselves to issue any direction in this regard. We hope and trust that the Central Government expeditiously consider of making legislation or taking such steps as are necessary in this behalf keeping in view the requirement of coordination in higher education in terms of Entry 66, List I of the Seventh Schedule of the Constitution of India.

For the aforesaid reasons, we do not find any merit in the contentions advanced on behalf of the petitioners. The petitioners are not entitled to any





relief. With the aforesaid directions, these writ petitions and the appeal are disposed of.

There shall be no order as to costs.

.....CJI

.....J.  
[R.C. Lahoti]

.....J.  
[B.N. Agrawal]

New Delhi;  
November 4, 2003.

IN THE SUPREME COURT OF INDIA  
CIVIL ORIGINAL JURISDICTION  
WRIT PETITION (CIVIL) NO. 29 OF 2003

Saurabh Chaudri and Ors.

...Petitioner

Versus

Union of India and Ors.

...Respondents

WITH

WRIT PETITION (CIVIL) NOS. 54, 57, 68, 69,  
84, 85, 89, 91, 95, 96, 99 & 100 OF 2003 AND  
CIVIL APPEAL NO. 8581 OF 2003  
[Arising out of S.L.P (Civil) No. 1347 of 2002]

J U D G M E N T

S B. SINHA, J.

I have had the advantage of reading the draft opinion of Hon'ble the Chief Justice of India. While concurring with the said judgment, I would like to add a few words of mine.

The core question involved in these appeals is as to whether by providing for institutional reservation, the equality clause is ~~violated~~

Article 14 of the Constitution of India prohibits discrimination in any form. Discrimination at its worst form would be violative of the basic and essential feature of the Constitution. It is trite that even the fundamental rights of a citizen must conform to the basic feature of the Constitution. Preamble of the Constitution in no uncertain terms lays emphasis on equality.

In Kesavananda Bharati Vs. State of Kerala [(1973) 4 SCC 226]

Shelat and Grover JJ. stated that:

"562....(5) The dignity of the individual secured by the various freedoms and basic rights in Part III and the mandate to build a welfare State contained in Part IV would be violative of basic feature of the Constitution of India "

Further, Hegde and Mukherjee JJ stated the law thus:

"661....The broad contours the basic elements or fundamental features of our Constitution are clearly delineated in the preamble. Unlike in most of the other Constitution, it is comparatively easy in the case of our Constitution to discern and determine the basic elements or the fundamental features of

our Constitution. For doing so, one has only to look to the preamble."

Kesavananda Bharati (supra) has been followed in L. Chandra Kumar Vs. Union of India and Others [(1997) 3 SCC 261].

In Maharao Sahib Shri Bhim Singhji Vs. Union of India and Others [(1981) 1 SCC 166] Krishna Iyer, J., however, in his characteristic style opined:

"20...The question of basic structure being breached cannot arise when we examine the vires of an ordinary legislation as distinguished from a constitutional amendment. Kesavananda Bharati cannot be the last refuge of the Proprietariat when benign legislation takes away their 'excess' for societal woe. Nor, indeed, can every breach of equality spell disaster as a lethal violation of the basic structure. Peripheral inequality is inevitable when large-scale equalization processes are put into action. If all the judges of the Supreme Court in solemn session sit and deliberate for half a year to produce a legislation for reducing glaring economic inequality their genius will let them down if the essay is to avoid even peripheral inequalities. Every large cause claims some martyr, as sociologists will know. Therefore, what is a betrayal of the basic feature is not a mere violation of Article 14 but a shocking unconscionable or unscrupulous travesty of

the quintessence of equal justice. If a legislation does go that far it shakes the democratic foundation and must suffer the death penalty. "

Recently a question came up before the US Supreme Court in Jennifer Gratz and Patrick Hamacher Vs. Lee Bollinger decided on 23rd June, 2003 likely to be reported in (2003) 539 U.S. wherein the guidelines providing for selection method under which every applicant from an underrepresented racial or ethnic minority groups was to be automatically awarded 20 points out of 100 points needed to guarantee admission, was struck down as has been violative of equality protection clause. It was observed:

"The very nature of a college's permissible practice of awarding value to racial diversity means that race must be considered in a way that increases some applicants' chances for admission. Since college admission is not left entirely to inarticulate intuition, it is hard to see what is inappropriate in assigning some stated value to a relevant characteristic, whether it be reasoning ability, writing style, running speed, or minority race. Justice Powell's plus factors necessarily are assigned some values. The college simply does by a numbered scale what the law school accomplishes in its "holistic review." Grutter, post, at 25; the distinction does not imply that applicants to the undergraduate college are denied individualized consideration or a fair chance to

compete on the basis of all the various merits their applications may disclose."

Delivering his minority opinion on his own behalf as also on behalf of Justice Souter, Justice Ginsburg, however, held:

"Our jurisprudence ranks race a 'suspect' category, 'not because (race) is inevitably an impermissible classification, but because it is one which usually, to our national shame, has been drawn for the purpose of maintaining racial inequality.'" *Norwalk Core Vs. Norwalk Redevelopment Agency*, 395 F. 2d 920, 931-932 (CA2 1968) (footnote omitted). But where race is considered "for the purpose of achieving equality," *id.* at 932, no automatic proscription is in order. For as insightfully explained, "the Constitution is both color blind and color conscious. To avoid conflict with the equal protection clause, a classification that denies a benefit, causes harm, or imposes a burden must not be based on race. In that sense, the Constitution is color blind. But the Constitution is color conscious to prevent discrimination being perpetuated and to undo the effects of past discrimination." *United States Vs. Jefferson County Bd. Of Ed.*, 372 F.2d 838, 876 (CA5 1966)(Wisdom,J.); see Wechsler, *The Nationalization of Civil Liberties and Civil Rights* Supp. To 12 *Tex.Q.* 10 23(1968) (Brown may be seen as disallowing racial classifications that "imply an invidious assessment" while allowing such classifications where "it invidious in implication" but is needed to "correct

inequalities"). Contemporary human rights documents draw just this line, they distinguish between policies of oppression and measures designed to accelerate de facto equality. See Grutter, post, at 1 (Ginsburg, J. concurring)(citing the United Nations - initiated Conventions on the Elimination of All Forms of Racial Discrimination and on the Elimination of All Forms of Discrimination against Women)."

The validity of institutional reservation must be judged on the touchstone of equality clause.

While considering the reasonableness of the institutional reservation, we have taken into consideration the effect of equality clause contained in Articles 14 and 15 of the Constitution of India.

The question as regard merit of the students vis-à-vis right of development and human rights angle had been considered at some length in Islamic Academy of Education and Anr. Vs. State of Karnataka and Ors. [JT 2003 (7) SC 1] and following Pradeep Jain Vs. Union of India [(1984) 3 SCC 654] it has been held:



For the purpose of achieving excellence in a professional institution, merit indisputably should be a relevant criterion. Merit, as has been noticed in the judgment, may be determined in various ways (Para 59). There cannot be, however, any fool-proof method whereby and whereunder the merit of a student for all times to come may be judged. Only, however, because a student may fare differently in a different situation and at different point of time by itself cannot be a ground to adopt different standards for judging his merit at different points of time. Merit for any purpose and in particular for the purpose of admission in a professional college should be judged as far as possible on the basis of same or similar examination. In other words, inter se merit amongst the students similarly situated should be judged applying the same norm or standard. Different types of examinations, different sets of questions, different ways of evaluating the answer books may yield different results in the case of the same student.

Selection of students, however, by the minority institutions even for the members of their community cannot be bereft of merit. Only in a given situation less meritorious candidates from the minority community can be admitted vis-a-vis the general category; but therefor the modality has to be worked out. For the said purpose de facto equality doctrine may be applied instead of de jure equality as every kind of discrimination may not be violative of the equality clause. (See Pradeep Jain vs. Union of India - 1984 (3) SCC 654).

Even applying the said tests, institutional reservation cannot be held to be unconstitutional.

Mr. Nariman contended that provision for reservation being a suspect legislation the strict scrutiny test should be applied. "Even applying such a test, we do not think that the institutional reservation should be done away with having regard to the present day scenario. We may notice that such a test has been applied for upholding a statute recently in Balram Kumawat Vs. Union of India [(2003) 7 SCC 626].

[S B. Sinha]

New Delhi;  
November 04, 2003

IN THE SUPREME COURT OF INDIA  
CIVIL ORIGINAL JURISDICTION  
WRIT PETITION(CIVIL)NO. 29 OF 2003

Saurabh Chaudri & Ors.

.....Petitioner(s)

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WITH

WRIT PETITION(CIVIL)NOS.54,57,68,69,84,85,89,91,  
95, 98, 99 & 100 OF 2003

AND

CIVIL APPEAL NO. 8581 OF 2003  
(Arising out of S.L.P. (Civil) No. 1347 of 2002)

JUDGMENT

Dr. A.N. Lakshmanan,J.

While concurring with the conclusion arrived at by Hon'ble the Chief Justice, I would like to add the following few lines for streamlining the policies and processes for admission to Medical Courses and other Professional Courses. The issues and options are discussed below:

Every year during the admission season several lakhs of students undergo immense suffering and harassment in seeking admission to Professional Courses caused by uncertain policies, ambiguous procedures and inadequate information. The miseries of students and parents are escalating year after year due to boundless expansion in the number of professional institutions and their intake capacity, emergence of a large variety of newer disciplines and mobility of students seeking admissions beyond the boundaries of States. The students who are about to complete their high school education go through a period of acute anxiety caused by the uncertain situation about their chances for further education. The number of qualified students wanting to go for higher studies has been swelling largely motivated by hopes of better economic security and partly by a desire to attain greater upward social mobility. Then begins their trauma due to many prevailing unfair practices in admissions and devious ways of fee collections exploiting the anxiety of students and uncertainty of procedures. Most of the efforts to deal with these problems are ad-hoc in nature often decided under judicial orders. Different State and Central authorities take many different actions often leading to severe inconsistencies. There is substantial scope for streamlining the admission process, even within the regulatory powers of the

authorities, provided these issues are not dealt with on an emergency basis during the admission season but done in a co-ordinated and comprehensive manner ahead of time.

#### ISSUE NUMBER ONE:

##### **ENTRY QUALIFICATION:**

For admissions to under-graduate programmes, there are several different eligibility norms among the different categories of institutions and among the various States. Some are based on Twelfth Standard marks or grades only, some are based on the Entrance Examination only, and some are determined by a combination of these with different weightages. There is endless number of justifications for each of the above, confusing the students from different parts of the country.

The preferred option, in my view, should be for a designated agency or the University concerned to conduct the entrance examination for professional as well as non-professional institutions in the specified subjects, (an option suggested by this Court). The marks awarded in those subjects should be the basis for determining the merits of the students for admission to the institutions to

which they apply.

## ISSUE NUMBER TWO:

### **UNPLANNED GROWTH OF INSTITUTIONS**

The growth of the Professional Institutions has been at an geometrical rate during the last five years. During recent years the expansion of educational facilities for higher education has been nearly exclusively in the private unaided sector due to the financial incapacity of Governments.

Those who have ventured to start the new institutions are motivated by commercial interests and not by educational and social interests. Political considerations have become paramount in sanctioning of colleges. There has been a high level of exploitation of students in certain disciplines through unethical and illegal collection of unauthorized payments. The discontent among the meritorious students is simmering also because only those, even with poor competence, but who could pay high illegal amounts can get into many institutions.

#### OPTIONS:

1. The country needs to evolve urgently a predictable pattern of growth for the Higher Education system in Technical, Managerial, and other Professional disciplines as well in Science and Humanities at least for the next five years. The present level of ad-hoc approach and stampede should be eliminated.
2. The national blue print and the road map for the development of professional education should be based on maintaining credible level of quality standards and anticipated demand structure in economic and social sectors.

#### ISSUE NUMBER THREE:

##### FEE STRUCTURE:

This Court states: "A rational fee structure should be adopted by the Management, which would not be entitled to charge a capitation fee. Appropriate machinery can be devised by the State or University to ensure that no capitation fee is charged and that there is no profiteering."

#### OPTIONS:

One possible remedy is to make a rule under the Prevention of the

Capitation Fee Act that collecting any fee that was not previously announced in the college publications and any fee collected without a formal receipt should be punishable offences. This rule should be strictly enforced.

#### **ISSUE NUMBER FOUR:**

##### **CERTIFICATES HASSLES:**

When we consider the size of our country and the large number of institutions and huge volume of applicants, the man hour and money lost in running around for getting the certificates during the admission season must run into equivalent of several crores of rupees. A more hassle-free system for authenticating the required information from students should be evolved.

##### **OPTIONS:**

Every student be provided with a basic identity certificate while he/she is in the higher secondary stage (10<sup>th</sup> to 12<sup>th</sup> std). This should provide all essential information such as date of birth, community, domicile, photo identity etc., authenticated by a designated official. This should be acceptable for admission requirements in any institution and in any State in India.



**Superspeciality Institutions and Institutions where  
highly skilled Training/Education is imparted:**

On the issue whether there can be Article 15(4) reservations in super-speciality courses, this Court was categorical when it declared that there could not be any reservation at the level of super-specialisation in medicine because any dilution of merit at the level would adversely affect the national interest in having the best possible at the highest level of professional and educational training."

Similar view was already taken by this Court in *Pradeep Jain V. Union of India*, AIR 1984 SC 1420.

In similar vein, in *Jagdish Saran vs. Union of India*, AIR 1980 SC 820, this Court observed that Merit must be the test when choosing the best, according to this rule of equal chance for equal marks. This proposition has greater importance when we reach the higher levels of education for postgraduate courses. This Court further observed that the host of variables influence the

qualification of the reservation as one factor deserves great emphasis, the higher the level of the speciality the lesser the role of reservation.

In the case of Article 15(4) reservations, this Court has made it clear that the claims of national interest demands that these reservations can never exceed 50% of the available seats in the concerned educational institutions.

The view was approved by this Court in the case of *Indra Sawhney V. Union of India*. If one looks at this issue in the light of the spirit of the ratios laid down in *Preeti Srivatsava v. State of M.P.*, AIR 1999 SC 2894 and in *AIIMS Students Union v. A.I.I.M.S.*, AIR 2001 SC 3262, one would come to the inevitable conclusions that the constitutional reservations contemplated under Article 15(4) should be kept at the minimal level so that national interest in the achievement of the goal of excellence in all fields is not unduly affected.

Of course, as between the reserved category candidates, there should be inter-se merit observed. This has been emphasised by this court in several cases.

As regards the constitutional validity of institutional/regional/university wise reservation/preference, in view of this court's emphasis on the need to strive for excellence which alone is in the national interest, it may not be possible to sustain its constitutional validity. However, the presently available decisional law is in support of institutional preference to the extent of 50% of the total available seats in the concerned educational institutions.

**Conclusions:**

- 1) In the case of Central educational institutions and other institutions of excellence in the country the judicial thinking has veered around the dominant idea of national interest with its limiting effect on the constitutional prescription of reservations. The result is that in the case of these institutions the scope for reservations is minimal.
- 2) As regards the feasibility of constitutional reservations at the level of super-specialities, the position is that the judiciary has adopted the dominant norm, i.e., "the higher the level of the speciality the lesser the role of reservation". At the level of super-specialities the rule of "equal chance for equal marks" dominates. This view equally applies to all super-speciality institutions.

- 3) As regards the scope of reservation of seats in educational institutions affiliated and recognised by State Universities, the constitutional prescription of reservation of 50% of the available seats has to be respected and enforced.
- 4) The institutional preference should be limited to 50% and the rest being left for open competition based purely on merits on an All India basis.
- 5) As regards private non-minority educational institutions distinction between government aided and unaided institutions. While government/State can prescribe guidelines as to the process of selection and admission of students, the government/State while issuing guidelines has to take into consideration the constitutional mandate of the requirement of protective discrimination in matters of reservation of seats as ordained by the decisional law in the country. Accordingly, the extent of reservation in no case can exceed 50% of the seats. The inter-se merit may be assessed on the basis of a common All India Entrance Test or on the basis of marks at the level of qualifying examination.

6) The position with respect to minority aided institutions is that they are bound by the requirement of constitutional reservation along with other regulatory controls. However, the right to admit students of their choice being part of the right of religious and linguistic minorities, to establish and administer educational institutions of their choice, the managements of these educational institutions can reserve seats to a reasonable extent, not necessarily 50% as laid down in Stephens College case. Out of the seats left after the deduction of management quota, the State can require the observance of the requirement of Constitutional reservation.

7) As regards the unaided institutions, they have large measure of autonomy even in matters of admission of students as they are not bound by the constraints of the demands of Article 29(2). Nor are they bound by the constraints of the obligatory requirements of Constitutional reservation.

Before parting with this case, I am of the opinion that the younger generation in our society nurturing fond hopes and aspiration for their future professional careers should feel it as a pleasurable experience to explore the

available options in higher education. They should be spared from the mental torture due hassles and unsavoury experiences in getting to the first base. To the extent possible they should be made to feel that they are part of one nation. Tensions and frustrations at their impressionable age will surely result in a society with distorted and negative values damaging the foundations of a healthy society. The policies and procedures for admissions should be viewed from the larger impact on the future of India.

.....J.  
( Dr. AR. Lakshmanan )

New Delhi,  
November 4, 2003.

REPORTABLE-747/2003

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.10250 OF 2003

( From the Judgment and Order dated 30.8.2000 of the Gauhati High Court in W.A.No.343 of 2000)

Board of Secondary Education of Assam

..Appellant

v.

Md.Sarifuz Zaman and Ors.

..Respondents

(With C.A.No.10251 of 2003)

THE 19TH DAY OF DECEMBER, 2003

Present:

Hon'ble Mr.Justice R.C.Lahoti  
Hon'ble Mr.Justice Ashok Bhan

P.K.Goswami, Sr.Adv., Rajiv Mehta and B.Aggarwalla. Advs. with him for the Appellant

Ms.K.Sarada Devi. Adv. for the Respondents.

ORDER

The following Order of the Court was delivered:

\*CP\*





**IN THE SUPREME COURT OF INDIA**

**CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO. 10250 OF 2003**  
**(Arising out of SLP(C) No. 4446/2002)**

Board of Secondary Education of Assam .....Appellant

Versus

Md. Sarifuz Zaman & Ors. ....Respondents

WITH

**CIVIL APPEAL NO. 10251 OF 2003 (@ SLP(C) No.4445/02)**

**ORDER**

Leave granted in both the SLPs.

Common questions of law, in the backdrop of similar facts, arise for decision in these two appeals. It would suffice for our purpose to notice facts of one of the cases.

One of the respondents, a student having taken his education in Government Boys Higher Secondary School, passed the matriculation examination conducted by the Board of Secondary Education, Assam, in the year 1991. Thereafter, he passed higher secondary examination and then the B.Sc. examination in the year 1998. When he filed the writ petition, he was undergoing a course of study in computers. At that point of time, on October 12, 1999, he moved an application to the Board

complaining that his date of birth was wrongly mentioned in the school records as May 30, 1974, while his actual date of birth was August 16, 1975. The mistaken date of birth, as forwarded by the school, had crept into the Admit Card issued by the Board. The writ-petitioner student pleaded that he did not realize the importance of the correct date of birth being entered into the school records, and therefore, he did not also realize the implications thereof until he was prompted in moving the application. The application moved by the respondent to the Principal of the school, was forwarded by the latter to the Board. The principal indicated that the age of the respondent was entered as 16.8.1975 in the admission register and other school records, but it was by mistake that while filling the form of the Board examination the date of birth was wrongly entered as 30.5.1974. The Principal described the mistake as 'clerical' and recommended for its correction. As the Board did not take any decision on the application, the respondent filed a writ petition in the High Court.

The Board relied on Regulation 8 of the Regulations for Conduct of Examinations by the Board, hereinafter 'the Regulations' for short, framed in exercise of the powers conferred by Section 24 of the Assam Secondary Education Act, 1961 hereinafter 'the Act', for short and submitted that an application moved beyond three years from the date of issuance of certificate by the Board was not liable to be entertained. The

plea found favour with the High Court resulting into dismissal of the writ petition. A writ appeal was preferred by the respondent. The Division Bench has allowed the appeal, set aside the judgment of the learned Single Judge and allowed the relief sought for by the respondent by issuing a writ of mandamus to the Board. Feeling aggrieved, the Board has filed these appeals by special leave.

At the outset, the learned counsel for the appellant-Board submitted that the Board was not interested in nullifying the relief allowed to the two respondents herein, but it was nevertheless interested in having the legal position settled inasmuch as the view of the law taken by the Division Bench has resulted in the Board being flooded with applications seeking rectifications in the dates of birth of the applicants as recorded in the certificates issued to them consequent upon their having cleared the examinations conducted by the Board. A possibility of unscrupulous applicants taking undue advantage of the liberal view taken by the High Court may result into non-genuine cases also being cleared whereon there would be difficult to keep a check. In view of the submissions so made, we propose to examine, deal with and settle the law as to the validity of 3 years period prescribed as outer limit for seeking the correction in the date of birth by reference to Regulation 8.

A perusal of the judgment of the High Court shows that mainly two reasons have prevailed with the High Court in forming an opinion against the Board and allowing relief to the writ-petitioners. The High Court has held: firstly, that Section 24 of the Act contemplates Regulations being made only for facilitating the working and functioning of the Board for the purpose of carrying out the provisions of the Act; the Regulations cannot be so framed as to deprive any applicant of the right of seeking correction of date of birth by providing a period of limitation for making the application; and secondly, any provision made in the Regulations framed with the object of carrying out the provisions of the Statute cannot extinguish any right generally available to a person to get a mistake corrected; no regulatory measure can, in any case, be absolute in nature. The learned counsel for the appellant has disputed the correctness of these propositions laid down by the High Court. Let us proceed to examine the same.

The Board is constituted under the Assam Secondary Education Act, 1961 and derives its authority thereunder. Sub-section (1) of Section 24 empowers the Board to make Regulations generally for the purpose of carrying out the provisions of the Act. Sub-section (2) of Section 24 by clauses (a) to (m) lays down specifically the subjects wherein the Board may frame Regulations without prejudice to the generality of the power conferred by sub-Section (1).

Regulation 8 provides as under —

**"8. CORRECTION OF DATE OF BIRTH.  
NAME, TITLE, ETC.:**

(a) *Date of Birth* : Once the date of Birth is reported by the Heads of the Recognised High School/High Madrasa/Higher Secondary School to the Board in the prescribed statement of candidates along with the application for the Examination and entered in the records of the Board, it will not be altered except on grounds of wrong calculation or clerical error for which an application with the recommendation of the Head of the Institute will have to be made to the Board through Inspector of Schools concerned who will verify the School records and submit report to the Board. The Secretary of the Board may pass orders for correction if he is satisfied that there was wrong report of the date of Birth due to wrong calculation or clerical error.

Provided that the Date of birth as 30<sup>th</sup> February, 31<sup>st</sup> April, 31<sup>st</sup> June, 31<sup>st</sup> September, 31<sup>st</sup> November and also 29<sup>th</sup> February excepting that of a leap year be uniformly corrected as the last date of Month without any reference to School.

If any inaccuracy creeps in at the stage of writing the certificates only, all other prior documents being correct in all respects, correction in the Certificate will be admissible if the application is received within 3 years from the date of issue of certificate by the Board with necessary fees.

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Undoubtedly, the general power conferred on the Board by Section 24(1) of the Act is for the purpose of carrying out the provisions of the Act. Under Section 24 (2), clause (d) provides the subject, on which Regulations

may be framed, as 'conducting examinations and publishing the results'. Clause (g) provides the subject as 'conditions under which candidates shall be admitted to the examinations of the Board'. It is not disputed, and could not have been, that the application form of a candidate seeking to participate in an examination held by the Board has to be forwarded by the educational institution wherein he is studying. The application has to be duly, truly and fully filled in. One of the informations required to be given is the age and date of birth of the student. It is common knowledge that the certificate issued by the Board either at the matriculation examination or at the higher secondary level examination mentions the date of birth of the student. Such certificate is invariably accepted as a valuable piece of evidence in proof of the date of birth and age of the applicant throughout his career ahead. The courts of law attach a high degree of probative value to the certificate and in the absence of anything to the contrary, the date of birth, as entered in the certificate, is accepted almost as binding. On the results of the examinations conducted by the Board having been published, the successful candidates are awarded certificates. The name, father's name, date of birth, the institution in which the student has studied and such other particulars as are incorporated in the certificate are based on the information made available by the contents of the application form, which is scrutinized, verified and forwarded by the institution, in which the student has studied. All these particulars carry with them a prima facie

guarantee of correctness inasmuch as such particulars in the record of the institution are furnished by the applicant himself and the applicant himself fills in and subscribes to the application seeking entry in the examination conducted by the Board. It is difficult to assume that such particulars would be false or incorrect so far as the applicant is concerned. At the same time, this procedure becomes a part of the process of 'conducting examinations and publishing the results' as also the 'conditions under which the candidates shall be admitted to the examinations of the Board' the two subjects covered by clauses (d) and (g) of sub-Section (2) of Section 24 of the Act, apart from the generality of the power conferred by sub-Section (1) of Section 24. It cannot, therefore, be contended that the matter relating to certificates and as to correction of any entry made therein does not fall within the purview of the power to make Regulations conferred on the Board.

Nobody can claim a right to have corrected an entry in a certificate solemnly issued by an educational institution that too the one enjoying the status of a statutory Board under the Act. The right of the applicant to have an error or mistake corrected is accompanied by a duty or obligation on the part of the Board to correct its records and the certificate issued by it. Not only it is a corresponding duty or obligation, it has also to be perceived as a power exercisable by the Board to correct an entry appearing in the certificate issued by it. People, institutions and government departments

etc. -- all attach a very high degree of reliability, near finality, to the entries made in the certificates issued by the Board. The frequent exercise of power to correct entries in certificates and that too without any limitation on exercise of such power would render the power itself arbitrary and may result in eroding the credibility of certificates issued by the Board. We, therefore, find it difficult to uphold the contention that the applicants seeking correction of entries in such certificates have any such right or vested right.

Lastly, the submission cannot also be countenanced that the regulatory measure engrafted into the Regulations on the subject of correction of errors in the certificates is 'absolute' in nature. The Regulation permits correction but subject only to reasonable restrictions.

Delay defeats discretion and loss of limitation destroys the remedy itself. Delay amounting to laches results in benefit of discretionary power being denied on principles of equity. Loss of limitation resulting into depriving of the remedy, is a principle based on public policy and utility and not equity alone. There ought to be a limit of time by which human affairs stand settled and uncertainty is lost. Regulation 8 confers a right on the applicant and a power coupled with an obligation on the Board to make correction in the date of birth subject to the ground of wrong calculation or clerical error being made out. A reasonable procedure has been prescribed for processing the application through Inspector of Schools who would



verify the school records and submit report to the Board so as to exclude from consideration the claims other than those permissible within the framework of Regulation 8. Power to pass order for correction is vested on a high functionary like Secretary of the Board. An inaccuracy creeping in at the stage of writing the certificates only, though all other prior documents are correct in all respects, is capable of being corrected within a period of three years from the date of issuance of certificate.

Three years period provided by the Regulation, is a very reasonable period. On the very date of issuance of the certificate the concerned student is put to notice as to the entries made in the certificate. Everyone remembers his age and date of birth. The student would realize within no time that the date of birth as entered in the certificate is not correct if that be so once the certificate is placed in his hands. Based on the certificate the applicant would seek admission elsewhere in an educational institution or might seek a job or career where he will have to mention his age and date of birth. Even if he failed to notice the error on the date of issuance of the certificate, he would come to know the same shortly thereafter. Thus, the period of three years, as prescribed by Regulation 3, is quite reasonable. It is not something like prescribing a period of limitation for filing a suit. The prescription of three years is laying down of a dividing line before which the power of the Board to make correction ought to be invoked and beyond which it may not be invoked. Belated applications, if allowed to be

received may open a pandora's box. Records may not be available and evidence may have been lost. Such evidence — even convenient evidence — may be brought into existence as may defy scrutiny. The prescription of three years bar takes care of all such situations. The provision is neither illegal nor beyond the purview of Section 24 of the Act and also cannot be called arbitrary or unreasonable. The applicants seeking rectification within a period of three years form a class by themselves and such prescription has a reasonable nexus with the purpose sought to be achieved. No fault can be found therewith on the anvil of Article 14 of the Constitution.

For the foregoing reasons, the appeals are allowed. The judgment of the Division Bench of the High Court is set aside. However, as already noted and in view of the very fair concession given by the learned counsel for the appellant-Board, it is directed that this judgment shall not have any effect or bearing on the relief allowed to the two respondents herein by correcting the entries as to date of birth made in their respective certificates. No order as to the costs.

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( R.C. LAHOTI )

.....  
( ASHOK BHAN )

New Delhi:  
December 19, 2003